DAVID C. SHEPARD

VS.

NORTHERN PACIFIC RAILWAY COMPANY, ET AL.

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UNITED STATES CIRCUIT COURT,

DISTRICT OF MINNESOTA,

THIRD DIVISION,

(In Equity.)

DAVID C. SHEPARD,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, GEORGE T. SIMPSON, IRA B. MILLS, CHARLES F. STAPLES, CHARLES E. ELMQUIST, E. A. EVARTS, O. J. WHITEMAN, J. RUMSEY REEVE, ACHILLE MICHAUD, CHARLES MICHAUD AND ADOLPH MICHAUD,

Defendants.

APPEARANCES:

HOW, BUTLER & MITCHELL,
Solicitors for Complainant.

EDWARD T. YOUNG, Attorney General,
THOMAS D. O'BRIEN and EDMUND S. DURMENT,
Solicitors for members of the Railroad and Warehouse Commission, et al.

VOLUME 5.

CHAS. E. OTIS, Master.

GEO. N. HILLMAN, Reporter.

FEDERAL BUILDING, St. Paul, Minn., Wednesday, February 3, 1909. The hearing was resumed pursuant to adjournment at 10 A. M.

ALLAN L. FLINN,
sworn on behalf of Defendants, testified:

By Mr. O'BRIEN:

Q. What is your full name?

A. Allan L. Flinn.

Q. How old are you, Mr. Flinn?

A. 43.

Q. Where do you reside?

A. St. Paul.

Q. What is your business?

A. I am a rate clerk for the Railroad & Warehouse Commission.

Q. How long have you occupied that position?

A. Six years.

Q. Prior to occupying that position, what was your business?

A. I was a rate clerk for a railroad company for three years prior to that.

Q. What railroad company?

A. Great Western.

Q. And prior to that, what was your business?

A. For about fifteen years prior to that I worked for railway companies in various capacities, as an agent, as a cashier, and various places of that kind; all in the railroad business.

Q. So that, for the past twenty-four years, you have been engaged, in one form or another, of railroad work?

A. Yes, sir.

Q. And for the past nine years have devoted your attention exclusively to the question of railroad rates?

A. That is right, sir.

Q. Now, do you mean freight rates?

A. Freight rates, yes; exclusively that.

Q. You were with the Commission, in the capacity you have described, during the time in which the testimony was being taken in the proceedings leading up to the establishment of the merchandise rates in controversy in this case?

A. Yes, sir.

Q. And were familiar with those proceedings?

A. Yes, sir.

Q. And took part in the preparation of the schedules?

A. Yes, sir.

Q. Has it been necessary for you, during the past six years, to examine and familiarize yourself with the various freight schedules in force in this state?

A. Yes, sir.

Q. Upon all of the roads operating in this state?

A. Yes, sir.

Q. So that you have a general familiarity with those rates?

A. Yes, sir.

Q. When a tariff is adopted or published by a railroad company for traffic in this state, is it immediately filed with the Railroad & Warehouse Commission of the state?

A. Yes, after I check it over, as compared with the rates that it is superseding.

Q. Well, the tariff is filed, is it, with the Commission?

A. Yes, sir.

Q. And your first duty is to check that over?

A. Yes, sir, as soon as we get it.

Q. And that has been your custom and practice?

A. Always.

Q. Have you prepared a statement with reference to freight rates generally in the state of Minnesota, the elements entering into the establishment of a rate and the effect of the enforcement of the rates in controversy in this case?

A. I have.

Q. Please read that statement.

A. The schedule of rates that was covered by the Commissioners' order of September, 1906, was made up and put out by the Commission with a view of equalizing the rates in the state at large, as well as to securing some reduction in the rates that were in effect prior to September. In the equalization of rates it happened that the lines operating north of the Twin Cities or of a line drawn across the state from the Twin Cities to the Dakota line were affected very much more than the lines south, for the reason that the roads south of that line had for years, as long as I have been in the rate business, maintained a higher scale of rates than the lines in the southern part of the state.

Mr. BUTLER: The northern lines had the higher scale of rates?

WITNESS: Yes, the northern lines had the higher scale of rates.

Q. On merchandise?

A. Merchandise. This is merchandise I am speaking of.

Attorney General YOUNG: Of course, that would not be true on some other subjects?

WITNESS: No. I make some reference to that, later on, Mr. Young. While this scale of rates they had may have had some justification in the earlier days in the state here, it hardly is good now, for the simple reason that the greater density of population in the northern half of the state and the consequently greater density of traffic that would come from that increased population is more nearly equal now, and you could hardly advance that as a valid reason for any difference at present. It is because of the purpose of the Railroad Commission to equalize the rates in this state that the northern lines are claiming a confiscatory reduction in their merchandise rates, and it is because of the equalizing feature of the

rates prescribed by Chapter 232, general laws 1907, that the lines south of the Twin Cities set up the same claim in so far as the commodity rates are concerned, and for the same reason, namely, because, in the case of the commodity rates, the lines south of the Twin Cities carried a higher scale of rates than the lines north on some of the commodities, as for instance, on grain, more especially, but it also applied to livestock. One of the claims advanced by the Northern Pacific to prove that the merchandise rates were confiscatory was that on account of the reductions ordered by the state they had been compelled to make rate reductions on their lines as far west as Bismarck, North Dakota. Now if this is true about the Northern Pacific, or any line north of the Twin Cities, it would be equally true of any line running south, say into Iowa or South Dakota—south or southwest, if you call it that way—as, for example, the Milwaukee and the Omaha and the Northwestern; but, after making an examination of the tariffs of those companies, I cannot find that any rates to any points beyond the borders of this state have been changed In proof of this I will present a statement showing the old and the new rates, first class, at points adjacent to the state line in Minnesota and at stations adjacent to the state line in Iowa, North and South Dakota.

Q. (Showing witness statement.) Is that the statement to which you refer?

A. That is the statement.

The statement produced by the witness was marked "Defts' Ex. YY—Flinn."

Mr. O'BRIEN: I might say, at this time, we anticipate that Mr. Flinn's testimony will apply, almost entirely, equally as well to the Minneapolis & St. Louis case, and we ask that it be considered as a part of that case.

Q. Now, Mr. Flinn, calling your attention to Ex. YY, please explain it in detail. What does the first column show?

A. It shows the mileage from St. Paul.

Q. And the second column?

A. That is the old first class rate, to the stations named in the margin, on merchandise.

Q. And the third column?

A. That is the new first class rates.

Q. When you say "new first class rates," what do you mean?

A. Well, it would probably be clearer to call that the present first class rates.

The MASTER: That is, the rate established by the Commissioners?

WITNESS: Yes, sir.

Q. Taking the first subdivision, under the heading of the Chicago, St. Paul, Minneapolis & Omaha, and Chicago & North-Western Railway Companies,—Where is Blue Earth city?

A. It is just south of Mankato, towards the Iowa line.

Q. And where is Elmore situated?

A. That is still nearer to the Iowa line.

Q. Can you indicate on this map here where Elmore is situated?

A. Yes, sir, I can. There is Blue Earth (pointing).

Q. Blue Earth is how far from the Iowa line?

A. It is about ten miles.

Q. And Elmore is practically upon the Iowa line?

A. Right at the line, yes, sir.

Q. Now, the next station going south upon that railroad is Ledyard, Iowa?

A. Yes, sir.

Q. The Commission's order went into effect November 15, 1906?

A. Yes.

Q. And upon that date, on these lines of road, the new rates, which you have indicated in the third column, were put into force as to the stations in Minnesota, including the stations of Blue Earth and Elmore?

A. Yes, sir.

Q. But the stations immediately south of the Iowa line continued to have the old rates which were in operation before?

A. Yes, sir.

Q. And that condition has continued, right up to the present time?

A. As far as I know, it does, yes; up to the time of the making up of this table.

Q. Well, that is a few days ago?

A. Yes, sir.

Q. So that, for something more than two years now, this condition of things has continued, as disclosed in this Ex. YY?

A. Yes, sir.

Q. The second subdivision has reference entirely to the Chicago, Great Western Railway?

A. Yes, sir.

Q. And that shows, also, that while the rates were changed in Minnesota, at the time of the adoption of the Commission's order, November 15, 1906, they were not changed to any points outside of Minnesota upon that road except in the two instances indicated?

A. That is correct; and that was not done till June 20, 1908.

Q. The rates to Milton, Iowa, were reduced, on the 20th of June, 1908, and to Bolan, Iowa, upon the same date?

A. Yes, sir.

Q. Those rates since that time have been maintained as shown upon this plat, have they?

A. Yes, sir.

Q. Do you know what the rate prescribed by the Commission upon merchandise of the first class for a haul of 115 miles is?

A. 33.6 cents per hundred pounds.

Q. So that, where they did make the reduction, it was not

made in conformity with the Commission's scale, nor was it made upon any theory of extensions upon the last haul of the Commission's scale?

A. No, sir.

Q. They made their rate into Iowa to that point just as they pleased?

A. Yes, sir.

Q. Without any reference to you?

A. Yes.

Q. Now, we will take the Minneapolis & St. Louis road, where Mr. Tittemore has explained how he would have to extend this upon the theory of the Commission's rate.

Mr. BUTLER: As to merchandise?

Mr. O'BRIEN: Yes. Isn't that one of the tables that you presented?

Mr. BUTLER: I don't remember.

Mr. O'BRIEN: You haven't forgotten your own tables? One of your tables was on merchandise, in which you have to extend according to the last haul allowed.

Mr. BUTLER: I don't remember that table.

Q. The third subdivision of this refers exclusively to the Minneapolis & St. Louis?

A. Yes.

Q. Have any changes been made by that road in the state of Iowa to conform to the schedule ordered by the Commission?

A. No, no changes to conform to the schedule.

Q. Have any changes been made in the rates into Iowa?

A. Yes, there was a slight advance at two stations that I took into account.

Q. What stations were those?

A. Lake Mills and Leland.

Q. The rates to those stations from St. Paul were actually advanced?

A. Yes, sir.

Q. In this subdivision we for the first time reach South Dakota territory?

A. Yes, sir.

Q. No changes were made by the Minneapolis & St. Louis as to that territory?

A. Yes, there were changes made there to some points into South Dakota.

Q. What was the change made there?

A. It was a reduction.

Q. From 55 cents to 48 cents?

A. Yes, sir.

Q. When was that change made?

A. That was made at the time that the rates were put in, but was not made in accordance with the Commissioners' schedule.

Q. What is the rate upon merchandise of the first class, by the Commissioners' schedule, for 200 miles?

A. 50.2 cents per hundred pounds.

Q. I now call your attention to the fourth subdivision, ended on the second column under the heading Chicago, Milwaukee & St. Paul Railway Company; you have marked there "reduced 67.07 to 57 cents"?

A. Yes, sir.

Q. When was that reduction made, at the date there?

A. Yes, June 7, 1907.

Q. Do you know anything about how that was brought about?

A. I haven't the faintest idea.

Mr. BUTLER: What point was that?

Mr. O'BRIEN: That was at Flandreau, South Dakota.

WITNESS: I says I haven't the faintest idea,—I might amend that by saying that I presume that is because of the rate they published to Watertown, a short-line rate to Watertown. This is 57 cents, and I presume is carried back to that point, in or-

der to line up the tariff. I don't know that; I think that is true though, because the rate at Watertown is 57 cents.

Q. Then, immediately below that, you have several items bracketed, and opposite that, "Reductions made to meet short-line rate via Great Northern Railway, 210 miles"?

A. Yes, sir.

Q. What is that?

A. Well, that would be the Great Northern's rate for 210 miles to a place—Breckenridge, for instance, and the same rate is carried at Wahpeton, and it was to meet that short-line rate of 210 miles that 51.2 cents per 100 pounds would be published; 51.2 cents is the Commissioners' rate for that distance, 210 miles.

Q. Wahpeton is immediately across the river from Breckenridge?

A. Yes, sir.

Q. Then I understand you to say that, in those cases, there was no general or graded reduction of rates made outside of the state of Minnesota?

A. Except in the few instances I show here in this statement.

Q. Except in the few instances you show at the particular points where changes were made from time to time in the rates?

A. Yes, sir.

The MASTER: This is confined to the lines south of St. Paul?

WITNESS: Yes, sir.

Q. Now, if you will go on.

A. For a great many years the state of Iowa has had a schedule of merchandise rates which is known as the Iowa distance tariff, and that was and is lower than any scale of rates that we have had in this state, but I don't believe—in fact I am sure—that none of the carriers who operate in Iowa and Minnesota have ever felt it necessary to reduce the rates in Minnesota on account of carrying those Iowa distance rates up to the Minne-

sota line. There is one carrier that I know of, anyway, that at one time, and I think they do yet, carry that Iowa distance rate from a station in Iowa to another station in Iowa where the business moves out of Iowa and into Minnesota and back into Iowa again.

Mr. BUTLER: What is that,—the Rock Island?

WITNESS: The Great Western. I wouldn't say this as a fact, but I am quite sure that the old Mason City & Fort Dodge was the road that at one time used to do the same thing.

Q. Now, do you mean by that, where a shipment was received in Iowa for delivery at another point in Iowa, and, in the course of its journey, passed through a section of Minnesota, that it was carried at the Iowa distance tariff for the entire length of the haul?

A. That is it exactly, Mr. O'Brien.

Q. But the Iowa distance tariff was not adopted for any haul commencing in Iowa and ending in another state?

A. No, it was adopted just for the state of Iowa.

Q. Go on.

A. I do not think that there is any good reason for instituting comparisons as to the effect that the extension of the rates that the Minnesota schedule would have on the revenues of the lines running into Dakota and Montana, because of the fact that the schedule of rates was made by the Minnesota Commission for use in the state of Minnesota, in exactly the same way that the Iowa distance tariff was made for use in Iowa. To illustrate that, I might say that the rates from Des Moines to St. Paul were never reduced to meet the Iowa distance rates, because the rate from Des Moines to St. Paul, first class, is 63 cents, while if you take the Iowa distance tariff for that haul, which on the short-line basis is 312 miles, you would get a rate of 45.6 cents per hundred pounds. I think that that example is a fair illustration of any condition that would obtain just through those particular rates.

The MASTER: It would be 63 cents from Des Moines to St. Paul and 43, according to the distance tariff, of Iowa?

WITNESS: Yes, sir. Now, I have gone to work here and taken something from the Interstate Commerce Commission, and while it, of course, was originally intended, I presume, for interstate commerce, I think it applies equally to any state commerce just as well. It is just merely giving some of their reasons for rate-making—the elements of rate-making. The Interstate Commerce Commission—

Mr. BUTLER: What authority are you citing?

WITNESS: It is just a book of theirs that they issue, I don't know just what you would call it—we have a copy of it in the office; it is just one of their reports.

Mr. BUTLER: Will you bring it down?

WITNESS: I can do so, yes. They claim that there are nine elements entering into the composition of rates, and those elements are, the competitive element, or the rates made necessary by competition; the bulk of the business; the direction in which the freight moves—that is, whether it moves in the direction in which most of the business is moving or in the reverse direction, in which the empty cars would be moving; the value of the article; the bulk and weight; the degree of risk; the facilities required and the conditions attending transportation, such as special equipment for perishable freight or freight of great bulk without much weight; analogy of articles to other articles already found in the classification. Now, of those elements they give the first place to competition, and I think it is true that competition has a great bearing on rates, but I believe that it is equally true that there is a point where even a strong element of competition ceases to be a factor in determining the rates to be charged, and I don't think there is any place where you could find a better illustration of that than right in the state of Minnesota. Taking the water competition by the Great Lakes as an example, great stress is laid on this element of competition by

all the carriers operating in this state, while as a matter of fact, the only points that are really benefited by that lake competition are Duluth and the Twin Cities and, in an indirect way, some of the so-called interior towns in this state, such as Faribault and Waseca, Hastings, Red Wing, Albert Lea and some others that I don't recall now. When I speak of those cities being benefited by the lake competition, I refer to the fact that the lines—take the St. Paul-Chicago lines, they publish a special scale of rates from St. Paul to those interior towns which is based on a scale commencing at say fifteen cents first class, and running down to four cents at sixth class, classified under the official classification. When I say six classes, it also includes two other classes—you can't call them classes, either, they are just two other classifications of freight in a way that would come under the official classification; one of them is fifteen per cent less than second class, the other one is twenty per cent less than third class, and there are a few articles in the official classification that would come under those two heads, so that, really speaking, instead of being six classes, although they are numbered 1 to 6, there are really eight classes. Now, this scale of rates that I speak about, is a scale of rates that is on a purely arbitrary basis, I think they call it an arbitrary tariff, (I am almost sure they do) and it is lower than the scale of rates that the Commissioners have ordered in; in some places it would make quite a good deal of difference, in others it would make a very small difference; at Hastings, for instance, it would make about three cents difference—a lower rate than the Commissioners' scale of rates would make from St. Paul; but this scale of rates that I speak of can only be applied on shipments coming from points east of what is known as the western termini of the trunk lines. Now, that means, really, east of points like Buffalo, Pittsburg, Salamanca and all those places, running right across the country that way.

Mr. BUTLER: Atlantic seaboard points?

WITNESS: No, they are central states, the terminals of the central states' territory and the beginning of the seaboard territory, really—yes, it is seaboard territory, it is freight coming from seaboard territory. That is right, Mr. Butler, I didn't quite understand you.

Q. Let us get that clear. These special rates apply only to freight which originates in the territory known as seaboard territory?

A. That is it exactly.

Q. And east of the eastern line of the central middle states?

A. That is it exactly. Now, it is further restricted to some of the towns, you see, that might be considered, or were really, on a direct line with freight that came from the Michigan ports and was coming to the Twin Cities; that is, that they publish lake-and-rail rates from those eastern seaboard points to St. Paul but they don't apply at a lot of the intermediate points, and then to make a rate to one of these intermediate points, they add this fifteen-cent-scale of rates to that rate to St. Paul.

Mr. BUTLER: The fifteen is added to what?

WITNESS: To the first class rate.

Mr. BUTLER: To the first class rate to where?

WITNESS: To St. Paul.

Mr. BUTLER: From the seaboard?

WITNESS: Yes, sir. That would apply equally to lake-and-rail or all-rail business.

Q. Now, let me see if I understand that. Do you mean that some few of the towns in Minnesota receive a lower rate upon freight originating in what you have designated the seaboard territory than they or any of the other towns receive upon freight originating nearer to Minnesota?

A. I didn't mean it in exactly that way. What I meant to say was that those towns that I mentioned have a lower rate from say New York, for example, than a town that might be just

a few miles either north or south of them, depending on which way the line ran. For instance, taking Hastings as an example. The first station east of Hastings, on the Milwaukee road, would not have the benefit of that fifteen-cent rate from St. Paul on business coming via lake-and-rail through Duluth, they would have to pay the Commissioners' schedule of rates for the distance that the freight was hauled.

The MASTER: Hastings would get the benefit of the seaboard rate?

WITNESS: Plus this fifteen-cent-scale, Judge.

Attorney General YOUNG: And has Hastings and these towns you name been selected arbitrarily?

WITNESS: Why, as far as I know, they have. They are the larger interior towns of the state that have the benefit of the rates, where there is any amount of jobbing done, say, for instance.

Q. As I understand, Mr. Flinn, the fact that you are endeavoring to establish is, that while competition often produces very low rates, comparatively speaking, to particular points, it never produces equal rates?

A. That is the idea exactly. That is, it might produce a low rate to one point, but it would not help the town right next to it.

Q. And that is the result of uncontrolled competition—that there is always an extreme inequality in rates?

A. That is just it exactly.

Q. Go on.

A. You can't find a better illustration of that than, for instance, Spokane. Spokane has been trying for years to get the rates changed there, and the change that they are trying to get is simply that they want to be put upon the same basis of rates that Seattle has. What they have now is almost exactly the same as those interior towns have in this state. Take the commodity rate, from a point east to Seattle, and say that was $2

and it was first class freight, and they would add to that 90 cents and that would make the rate at Spokane; that is just exactly the same thing that we have here.

Attorney General YOUNG: The 90 cents would be the local rate back?

WITNESS: The back haul from Seattle to Spokane.

Attorney General YOUNG: And that would apply whether the freight ever went to Seattle and came back or not?

WITNESS: Exactly. I don't suppose the railroad company would haul it to Seattle and back.

Q. Go on, Mr. Flinn.

A. Competition does, in many cases, benefit a given locality, but its benefits are generally restricted to that given locality which, from its natural geographical location, makes it a point around which various railroad lines are working to secure a monopoly of the business. I think that competition will not produce equal rates, as is shown very strongly by reference to rates at junction points in this state, as the short-line to a given junction point will publish the rate for the actual distance that is hauled, and then all the competitors will meet that rate and publish that same rate over a line that is sometimes fifty miles longer. Then they are restrained, by the law of this state, from charging a greater rate for a shorter than for a longer haul, and, consequently, they are compelled to "blanket" that junction-point rate back to a point where it would meet the actual mileage rate; so that by doing that they are actually charging a lower rate for a hundred miles than is charged for another hundred-mile haul in some other direction. It is this kind of competition that really has a great effect in the rate because it is that kind of competition that causes the carriers to voluntarily make a reduction at a junction point; but I do not think that reduction that is made voluntarily, that way, at a junction point to meet a competitor's rate, should be charged up to the rates that were ordered in by the Railroad

& Warehouse Commission. As a matter of fact, any carrier, I don't care who, might lose revenue at some junction point where they did not meet a competitor's rate, but they would be more than compensated for that by the collection of the right rate for the distance hauled at points where they now have blanketed the rates back. And, in addition to that, where they might have the long haul at some one junction point, they would have the shor one at another, and a loss at one place where they did not meet their competitor's rate would be offset by their gain at another one. There has been a gradual reduction of rates in this state since 1870, but in only a few instances have these been made voluntarily by the carriers. While an inspection of the increase in the tonnage hauled in the state, say, since 1890, shows that in that year there were 13,537,010 tons hauled, according to the reports of the railways to the Railroad & Warehouse Commission, in 1907 there were 74,063,918 tons, which would show an increase of 60,526,908 tons.

Mr. HOW: Does that apply to local traffic, or tons hauled interstate and local, both?

WITNESS: I cannot say as to that fact, but it is the same table taken for both years.

Q. Go on.

A. That would show an increase in the tonnage of about 400 per cent. I think that fact alone would seem to indicate sufficient reason for any and all reductions that have been made, leaving entirely out of the question the more economical handling of traffic that has been brought about since 1890. The reductions in rates that have been made by the Minnesota Commission from time to time have almost invariably been contested. Take, for example, the distributing rates, so-called, which were put in by order of the Commission in 1900: these rates were accepted by the companies and published in the form of tariffs on November 10, 1900, but on January 25, 1902, these rates were cancelled by the N. P. and Great Northern,

so that the smaller jobbing centers in the northern part of the state concluded they would be wiped off the map. An order was made by the Commission restoring the rates but was appealed by the carriers to the district court and the Commission's order was sustained there by Judge Kelly, the railway companies appealing it to the supreme court, but before it ever reached the supreme court the two lines interested published the rates, making them effective June 4, 1904. In other words, they managed to stave off the application of those rates for two years. Now, going back to the Interstate Commerce Commission's statement of elements that enter into rate-making, I don't think that any of them are of as much importance as the two they have placed first and second; but there is another element that the Interstate Commerce Commission did not give a place to, and that is the desire of all carriers to secure industries along their lines. Some of the roads, anyway, I don't know just how many, maintain an industrial department whose whole business it is to try and secure stores and factories and various industries for the different towns along their lines, and they spend money and time in doing it. To assist these different industries they make special rates for them on raw material going into the factories, and, as a general proposition, they also make a rate out for their finished product. One object of the rates they make, of course, is to enable some one of their industries to compete with some other similar industry in another or in the same section, but really the main object of it is to take in the raw material and then get the haul out of the finished product. By doing that they get the two rates, which, I think, in almost every case, would be greater than if they went to work and just hauled some raw material, say, to St. Paul or Minneapolis, and then let it go off their own rails, because they would have nothing but the one haul on the raw material, which would carry the lowest rate that they could possibly have. The idea of my stating

that is to show that in view of the number of such special rates that the carriers make themselves and put in voluntarily, it looks as if the different railway companies were trying to prove that the rates that the Commission has put in are confiscatory when, as a matter of fact, they are not as low as some of the rates that they publish themselves and that they come in to the Railway Commission and ask permission to publish. Of course, what I have said so far, the greater share of it, is related to the merchandise rates, and that is equally true of a lot of commodities, quite a number of them—I don't know anything that it would apply to any more forcibly than to grain or to, say, box-lumber, something of that kind, or to this cheap spruce timber that they make into paving-blocks, such things as that.

Q. Mr. Flinn, let me see if I understand that point that you make. You say that where, for the purpose of locating an industry upon the line of a road, where the road will control the haul of the raw material and also of the finished product, it is often the case that the railroads request permission to put in a much lower rate upon the raw material than any rates prescribed by these acts of the legislature or orders of the Commission?

A. Yes, sir, that is quite often the case.

Q. And that if they are permitted to maintain their own rates upon the finished product, by combining the two, they could put in what rate they liked on the raw material?

A. Yes, just as I say, it would give them a greater revenue than if they just took and hauled the raw material right off their rails and lost it.

Q. Giving another instance of inequality of rates?

A. Yes, sir, that is it exactly.

Q. Go on.

A. Now, taking the grain rates that Mr. Tittemore spoke about in his testimony,—the lines from St. Paul have carried

for quite a long time at a rate of 7½ cents (proportional rate) out of here.

Mr. BUTLER: That is, to Chicago?

WITNESS: Yes, to Chicago. It is true that that is, supposedly, a proportional rate, and I suppose that it really is so, inasmuch as the grain that goes out under that rate has already paid a rate into the cities; but take, for instance, in the Cannon Falls elevator case, it was shown that, at times, like at Cannon Falls, the rate from Cannon Falls to Minneapolis, added to the rate from Minneapolis to Chicago was less than the rate from Cannon Falls to Chicago direct, and the Interstate Commerce Commission ordered that rate equalized. That was one of the things, and the only point that they gained there, that they should have that rate equalized. I think the rate was 7 cents from Cannon Falls, and 7½ cents out, and they were paying 15 cents direct, so that they got the advantage of half a cent per hundred pounds by reason of the fight that they made.

Mr. BUTLER: That is, they reduced it?

WITNESS: They reduced the rate.

Mr. BUTLER: They reduced the 15-cent rate to 14½?

WITNESS: Yes, to the sum of the two rates in and out of Minneapolis. Only a certain percentage of the grain grown south of the Twin Cities comes to Minneapolis, as the carriers south of us spend their time and energy in directing that business to Chicago, because they get a long haul and they get the whole rate, while if that grain were to come into Minneapolis, it might go into an elevator, and while they would get their pay for the haul in to Minneapolis, it would be lost to their line forever; that is, they might never get that haul out again of that grain, it might go to some other line. Now, speaking of the second commodity in Chapter 232, which is lumber, I did not go into that very far for the reason that I don't think that any of the railway companies have directed much of their

testimony against the lumber rates, because, as Mr. Tittemore testified, the lumber rate affected them so slightly it made little difference to them, but I could just point to one thing as illustrating just what difference it would make— or would not make, rather—and that is the lumber rate between Duluth and St. Paul. The lines between Duluth and St. Paul publish a six-cent rate, while for the shortest haul over the N. P. of 151 miles, Chapter 232 would allow of 10½ cents, and for all of that reduction below the legislative rate, which has been in effect for quite a long time, I do not think that anybody could imagine that that would be affected by any lake competition, or, in fact, by anything of that kind, for the simple reason that it is a purely local rate that is published by the different roads, the N. P. and the Great Northern and the Omaha. Now, what is true with reference to lumber, I think is equally true with respect to livestock. I think there was practically no testimony at all put in that attacked the livestock rates, because whilst it may have made a large difference, maybe, in some one point, it was simply that it was going to work and equalizing the rates all over the state, that is, putting them on the same basis, and I think that the railway companies that were most affected would probably be the N. P. and the Great Northern, and I don't think it affected either one of them seriously enough to make them feel that it was necessary for them to give any great amount of attention to those rates, and for that reason I did not go much into that particular feature of the rates themselves. However, when it comes to coal, I found that there had been a line of testimony offered that had some strong elements of reason about it until you went to work and analyzed it as made, when it resolved itself into an effort on the part of the carriers to equalize what they considered as conditions that existed. Now, somebody, I don't know who, but I think it was Mr. Tittemore, testified that the rate of $1.40 a ton on soft coal from the Head of the Lakes to stations on

the lines (it is true of all lines, of course,) running south as far as Albert Lea, that the rate from the Head of the Lakes of $1.40 had forced them to publish a rate of $1.40 from the Illinois field. Now, that sounds all right enough until you stop and consider that that soft coal, coming from the Head of the Lakes and going into that territory is coal that has come from—well, a good share of it, from the Hocking valley district, Pennsylvania and Ohio, and that before that coal reached the docks in Duluth it had paid approximately $1.20 a ton (I say approximately because the lake freights vary a little) but it paid, say, from the Hocking valley district, about 90 cents to Cleveland or to Buffalo or some lake port like that; then it would pay about 30 to 40 cents a ton lake freight (averaging probably about 35 cents, but I gave it as 30); that would make $1.20 a ton that that coal would pay before it left the boat at Duluth. Now, the coal companies say that it is worth to them at least 50 cents a ton to handle that coal off the boats and on to the docks and back into cars again. That would be about $1.70 per ton in the cars ready to move from the Head of the Lakes. Now, when you add to that, $1.40 that that coal would pay again before it came into competition in that particular district, I can't see where the Illinois fields come into competition with it at all, because it pays $3.10 freight as compared with $1.40 from Chicago, or from the Illinois field, more properly speaking. It looks as though the railway companies were trying more to equalize the geological conditions of the country than anything else, because that is too wide a difference between the two kinds of coal, even allowing for the difference in the quality of them. Of course, the Hocking valley is better than the Illinois coal, we know that, but really, as a matter of fact, looking at the way-bills, say, that I have looked over, of some of the roads, I do not believe that there is any very great quantity, in fact, very little, coal that goes from the Head of the Lakes to stations south of St. Paul. Now, if there

were a coal-mine at Duluth and coal mined and shipped from there, it might be true that they would have to equalize the conditions as compared with the Illinois field for a similar haul, but, as far as I could see, judging, as I say, by the figures I got, I could not see where there was any necessity for holding the southern part of this state as a market for the Illinois miners.

Q. Do you know what the selling price of the various kinds of coal is at the mines?

A. I do not.

Q. All the coal that comes by way of Duluth, from the time it leaves the mine, has to pay from the mine to the lake, then up the lakes to Duluth, and then from Duluth to the point of consumption?

A. Yes, sir.

Q. And from every known coal-field in the United States the rate to Duluth is at least $1.20?

A. I think that is true, yes. Not from every known coal-field, no, I will amend that. You mean from the fields in the eastern part of the country, that is, Pennsylvania, Ohio and Virginia?

Q. Well, from every known coal-field from which Duluth receives coal by lake shipments.

A. That is true, yes.

Q. And at Duluth the freight is at least $1.20?

A. Yes, sir.

Q. And 50 cents for handling it at the docks?

A. That is what the coal people say is a fair amount for that service.

Q. So that the Illinois coal is brought to the Twin Cities by an all-rail haul, at the present time, for $1.40?

A. Yes, sir.

Q. Taking the Commission's rate upon soft coal, Hocking valley coal, brought to the Twin Cities by way of Duluth, and,

as I have said, from Duluth to the Twin Cities, at the Commission's rate, the charges would be at least $2.60?

A. $2.60 would bring it here to the cities.

Q. $2.60 including the cost of handling at Duluth?

A. Would bring it to St. Paul and Minneapolis.

Q. $2.10 for mere freight charges, without the cost of handling at Duluth?

A. Yes, sir.

Q. Have you prepared a statement showing the merchandise rates established by the order of the Commission and in controversy in this case, to Moorhead from St. Paul or the Twin Cities, and an extension of that same rate along the line of the Northern Pacific road to the coast, the extension being based on the same rate per mile as is allowed by the Commission's order for the haul from the Twin Cities to Moorhead?

A. On the same rate per ton per mile, yes, I did.

Q. And compared that rate with the rates now maintained upon the Northern Pacific road to the same stations?

A. I did.

Q. (Paper shown witness) Is that the statement?

A. That is the statement.

The statement shown witness was marked, for identification, "Defts.' Ex. ZZ—Flinn."

Q. The first column shows the miles from St. Paul,—is that from St. Paul, the Transfer or Minneapolis?

A. From St. Paul.

Q. The second column shows the Commission's rate?

A. Yes, sir.

Q. In Minnesota, according to the actual schedule, and beyond Minnesota upon the plan of extending the rate per ton per mile allowed in Minnesota to the point where the road leaves the state on for the entire distance?

A. Yes, sir.

Q. The third column gives the rate per ton per mile, does it?

A. Yes, sir.

Q. The fourth column gives the rate now maintained by the Northern Pacific Railway Company to that particular station, which rate has been maintained by it ever since the making of this order by the Commission?

A. Yes, sir.

Q. And the fifth column gives the rate per ton per mile based on the rates maintained by the Northern Pacific Road?

A. Yes, sir.

Q. Are you familiar with the circumstances leading up to the change in rates to North Dakota from the Twin Cities upon the Northern Pacific railway following the adoption of the schedule of rates fixed by the Commission's order upon merchandise in November, 1906?

A. In a general way I am, yes.

Q. Will you state what those proceedings were?

A. I don't know that I quite understand you, Mr. O'Brien.

Q. I want you to state the proceedings had resulting in a change of rates in Dakota as far west as Bismarck upon the line of the Northern Pacific Railroad, following the adoption of the Commission's schedule of rates upon merchandise in Minnesota in November, 1906.

A. Well, I cannot say that I am familiar with anything that happened with regard to the Dakota rates. I know, of course, of all the proceedings that led up to the reduction in rates by the Minnesota Commission, but what the carriers did in Dakota, I don't know of any proceedings that I had anything to do with in that respect at all.

Q. Do you know whether or not the jobbers of St. Paul claimed that unless the rates in eastern Dakota were changed, they would be put at a disadvantage?

A. Well, when it came to the distributing rates out of the

little jobbing centers in the northern part of the state, the jobbers of the Twin Cities came in to the Commission and testified that they would be at a disadvantage in shipping in to Dakota if the in-rate that was given to the jobbers was allowed to become effective; but that, so far as I know, is really all I knew with reference to the rates into Dakota.

Q. Have you examined Complainant's Ex. 48—Baird?

A. I did.

Q. That exhibit was introduced by Mr. Baird, for the purpose of showing that a combination of carload rate from St. Paul to Fargo and a less-than-carload rate from Fargo to Mandan and other stations in North Dakota was less than the through carload rates from St. Paul to the same points in Dakota upon the basis of the Commission's order, which fact he claimed would compel a reduction by the Northern Pacific Road of the less than carload rates from St. Paul to the Dakota points, in order that the jobbers in the Twin Cities might compete upon equal term with jobbers in Fargo and smaller cities west of the Twin Cities.

A. Yes, sir; that is true.

Q. Have you prepared a statement analyzing Exhibit 48—Baird?

A. I have. (Witness produces statement, which was marked for identification "Defts.' Ex. 3 A—Flinn.")

Q. This statement analyzing Complainant's Ex. 48—Baird, and showing, as to the merchandise mentioned in Ex. 48, (1) Sum of local carload rates from St. Paul to Fargo and Fargo to station named in Margin; (2) Through carload rate from St. Paul to station named in margin; (3) Sum of local rates (less than carloads) St. Paul to Fargo and Fargo to station named in margin; (4) Through rate (less than carloads) from St. Paul to station named in margin. Exhibit 3-A is divided into five subdivisions?

A. Yes, sir.

Q. That is, each division referring to the commodity or commodities described at the head of such subdivision?

A. Yes, sir.

Q. In each division column 1 is a statement of the sum of the local carload rates from St. Paul to the station named in the margin?

A. Yes, sir.

Q. "A" being the carload rate from St. Paul to Fargo?

A. Yes.

Q. "B" the carload rate from Fargo to the station named in the margin?

A. Yes.

Q. And immediately beneath that, the sum of those two rates?

A. Yes, sir.

Q. Column 2 is the through carload rate from St. Paul to the stations named in the margin as maintained by the Northern Pacific Railway?

A. Yes, sir.

Q. Column 3 shows the sum of the local less than carload rates, from St. Paul to the station named in the margin?

A. Yes, sir.

Q. "A" in each case being the local less than carload rate from St. Paul to Fargo, "B" the local less than carload rate from Fargo to the station named in the margin, and immediately beneath those two, the sum of those two rates?

A. That is correct.

Q. And column 4, the through less than carload rate from St. Paul to the station named in the margin?

A. That is correct.

Q. Turning to the first subdivision, "Beans dry in Sacks," we find that the sum of the carload rates in column 1 is 43.7 cents.

A. Yes, sir.

Q. And the through rate from St. Paul to Mandan, 40 cents?

A. Yes, sir.

Q. That through rate is the rate established and maintained by the Northern Pacific Railway Company?

A. Yes, sir.

Q. In the same subdivision, we find from column 3, that the sum of the local less than carload rates, from St. Paul to Fargo and Fargo to Mandan, is 78.1 cents?

A. Yes, sir.

Q. And that the through less than carload rate from St. Paul to Mandan is 67 cents?

A. Yes, sir.

Q. And it is only by taking the carload rate from St. Paul to Fargo, marked "A" in column 1, and the less than carload rate from Fargo to Mandan, marked "B" in column 3, that we can get a combination which produces a lower rate for less than carloads, as shown by column 4?

A. Yes, sir, that is correct.

Q. If, therefore, the Fargo merchant has a right to purchase his goods in carload lots and have the benefit of making his purchases in large enough quantities to secure the carload rate, the sum of the local carload rates must be compared with the through carload rates?

A. That is it exactly.

Q. And the sum of the local less than carload rates must be compared with the through less than carload rates?

A. Yes, sir.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. Have you examined the tables introduced as exhibits in connection with Mr. Baird's testimony numbered from about Ex. 40—Baird to Ex. 47?

A. I did, some of them.

Q. I am now referring to those exhibits which purported to show the rates which would be charged for interstate business upon the application to that business of the Commission's rates.

A. Yes, I examined them.

Q. And have you also examined the tables introduced in connection with the testimony of Mr. Tittemore, in the Minneapolis & St. Louis case, numbered Exs. 24 to 26?

A. I examined a part of those, too.

Q. I now ask you whether or not any interstate rate upon traffic leaving Minnesota for any other state, and coming to Minnesota from any other state, has since the operation of the order of the Commission beginning in November, 1906, been based, or changed or adjusted in conformity with the theory or the claims made in any of those exhibits.

Mr. BUTLER: We desire to note an objection to that class of testimony as immaterial and irrelevant and not the best evidence, and calling for the witness' conclusion, and being an ultimate matter of fact for the Master to find.

Mr. O'BRIEN: Our claim is that, both in the Minneapolis & St. Louis case and Northern Pacific case, testimony has been introduced to show the effect which would be produced by the adoption of the rates prescribed by the authorities of Minnesota which is in direct conflict with the actual result of a portion of those rates for the past two years.

The MASTER: The witness may answer.

A. I don't know of any changes having been made.

Q. Mr. Flinn, I don't think you answered that question fully.

Question read.

A. There have been changes made in the rates on the Northern Pacific, but, so far as the lines south of the cities are concerned, I don't know of any change having been made.

Q. I want to know whether or not the rates as changed upon the Northern Pacific road, upon traffic of that character, have been changed upon the basis of the extension of the Minnesota schedule, upon the theory illustrated in Mr. Baird's exhibits.

A. I don't know whether I quite understand that or not, Mr. O'Brien. I wonder if you mean from that if the rates have been changed in accordance with the rate per ton per mile, or do you mean on the basis of what the haul would be for a given distance?

Q. As I understand the claim advanced by the Complainants in this case, and particularly as advanced by Mr. Baird and shown in his exhibits, it is that for the purpose of establishing equal rates over the entire System of the Northern Pacific Railway Company, it would be necessary, if the prescribed rates for Minnesota were in force, to extend those rates upon the entire System by taking the rate allowed in the Minnesota schedules for the longest haul; by then ascertaining the addition found in those schedules for the last 100 miles of the haul, adopting that addition as a constant charge to be added for each 100 miles of haul, and in that manner constructing a tariff to points outside of the state of Minnesota.

A. Well, I believe, from the scale of rates that they have in now, that they did follow some such a plan as that, with rates as far out, say, as Bismarck, although the figures they used are not absolutely the exact figures that would be arrived at.

Q. What is their rate to Bismarck, at the present time?

A. 98 cents.

Q. What is the distance?

A. 443 miles from St. Paul.

Q. That is the rate upon class A, is it?

A. First class.

Q. What is the rate upon merchandise of the first class for a distance of 443 miles, under the order of the Commission?

A. 72.8 cents.

Q. Then how can you say that the Commission's rate was followed in establishing the rate to Bismarck?

A. I think I said that they had followed something of that plan, but it was not followed absolutely. I mean to say that it was not followed absolutely in adding for each mile.

Q. What would be the rate to Bismarck if the plan shown in Ex. ZZ—Flinn was adopted?

A. First class would be 96.5 cents.

Q. If the Commission's rate had been adopted to Bismarck, it would have been—?

A. 72.8 cents.

Q. Isn't it true, then, Mr. Flinn, that the plan which was adopted upon those rates to Bismarck was almost identical to the plan shown in your Ex. ZZ?

A. Yes, I should judge so. You said that they had taken the haul for each 100 miles; as a matter of fact, this is based upon the rate per ton per mile, and that was what gave the similarity of results. If you used the actual difference between the rate for 300 and 400 miles and added for each hundred miles, it would give a different rate.

Q. Well, Mr. Flinn, as I understand the claim illustrated in Mr. Baird's tables, it is that the Commission's rate would have to be taken as shown in those schedules; that where the distance was greater than the distance shown in the schedules, there would be added, for each 100 miles, the same amount as appears in the Commission's order as an additional allowance for the last 100 miles of the haul; and if that was done, where the rates were changed to Bismarck, it would have produced a rate of 78 cents?

A. 78 cents, yes.

Q. If, upon the contrary, the rate allowed by the Commission to the point of leaving the state was taken, and the rate per ton per mile to that point ascertained, and a tariff con-

structed to Bismarck upon that basis, it would have produced a rate of 96 cents?

A. 96.5 cents.

Q. As a matter of fact, the rate put in to Bismarck was 98 cents?

A. Yes, sir.

Q. Now, I ask you which system was followed?

A. Well, judging by the result of the rate they published, as compared with the rate that we figured up in this exhibit, I should suppose that they followed the same basis that we did in carrying that out, or nearly so.

Q. In preparing Ex. ZZ?

A. In preparing Ex. ZZ.

Q. Well, now, I ask you if you know of any tariff upon freight leaving Minnesota for any other state, or coming to Minnesota from any other state, based upon the other theory.

A. No, I don't know of any.

Q. I call your attention to Ex. 24—Tittemore. It is shown there that the present rate upon hard coal from Milwaukee to Albert Lea, a distance of 324 miles, is $2.25, or an average of seven mills per ton per mile, of which amount the Minneapolis & St. Louis receives 90 cents; that is what proportion of the through rate?

A. 40 per cent.

Q. It is shown that the Commission's rate upon hard coal for 324 miles is $1.99; it is then claimed, in double-column 10, that if that rate were to be in operation between Milwaukee and Albert Lea, the proportion received by the Minneapolis & St. Louis Road would be 62 cents. Will you please state what would be 40 per cent of $1.99 cents; it would be 80 cents, would it not?

A. Yes, 80 cents.

Q. So that, if the effect of the adoption of the commodity rate upon coal was that, on a haul from Milwaukee to Albert

Lea, the same rate would have to be adopted, and if the Minneapolis & St. Louis received the same percentage of that rate, the amount received by it would be 80 cents instead of 62, as shown in the first column of double-column 10 on Ex. 24?

A. Yes, sir.

Q. In other words, in the illustrations or claims made in Ex. 24, it is first assumed that the rates and schedules provided by the laws of Minnesota must be applied to interstate traffic as well; is that the case?

A. That is true.

Q. And that, instead of the local roads receiving the same proportion of the rate so established, it would be established either upon the basis of the initial haul or the end haul, as stated in those exhibits, or in some other method than the division of the freight now as made?

A. Yes, sir.

Q. And that basis extends through the entire exhibit 24 and each item is calculated in the same manner?

A. I believe it is.

Mr. O'BRIEN: In this connection, I desire to call the attention of the Court to the false basis upon which Ex. 24—Tittemore proposes to compare the commodity rates, and, for illustration, I take the first item appearing in that exhibit, hard coal from Milwaukee, Wisconsin, to Albert Lea, a distance of 324 miles, the present rate $2.25; in double-column 7 it is shown that if the rates prescribed by Chapter 232 for similar distances be applied, the rate would be $1.99; it appears, in column 8, that the distance the Minneapolis & St. Louis Road would carry that coal from the point of junction with the Illinois Central to Albert Lea would be seven miles; that, under present conditions, as shown by column 9, the proportion of the through rate (which as I have said is $2.25) received by the Minneapolis & St. Louis for the haul of seven miles is 90 cents, which is 40 per cent of the entire rate; it is claimed, in double-

column 10, that if the legislative rate of $1.99 for a haul of 324 miles was substituted, the Minneapolis & St. Louis Road would earn for the haul of seven miles, if its earnings were based upon the allowance of the Commission of a haul for seven miles, 62 cents, while if its earnings were based upon the allowance of the Commission for the haul of the last seven miles of an entire haul of 324 miles, its earnings would be only three cents per ton. We desire to call the attention of the Court to the fact that the basis used in double-column 10 has no foundation in practice, in fact, or in law; and that if it could be assumed, as a matter of fact, or as a matter of law, that the through rate would be placed upon the statutory basis of $1.99, it must also be assumed that the proportion of that new rate which the Minneapolis & St. Louis Road would receive for the seven-mile haul would be the same as the proportion they now receive of the present rate, and that that proportion or 40 per cent, would be 80 cents, and not 62 cents, as stated in double-column 10 or three cents, as stated in double-column 11.

Mr. BUTLER: Much of what Mr. O'Brien has just said partakes of the nature of argument, and we think it would not be profitable at this time, to spread upon the record our argument. I think if the testimony be read in connection with the exhibit (that is, the testimony which accompanied the exhibit at the time of its introduction) the purpose of its preparation and introduction would be perfectly obvious. It is not claimed that divisions between connecting carriers are made on percentage basis or on mileage basis, either at one end or the other of the haul. It is a matter of bargaining, as I understand the testimony in the case, depending upon the situation and circumstances.

Q. I now call your attention to the exhibit in the Minneapolis & St. Louis case known as Complainant's Ex. 25—Tittemore, headed "Statement showing through rates, Minneapolis & St. Louis Railroad, revenue and rates per ton per mile on

traffic from Chicago, Illinois, to Minneapolis & St. Louis Railroad stations in Minnesota compared with statute rates and rates per ton per mile under order September 6, 1906, for similar distances," and I call your attention to the first item in the first subdivision; for merchandise of the first class the rate now in effect is shown to be 60 cents per hundred and the Minneapolis & St. Louis proportion of that rate for a haul of seven miles from the junction point is shown to be 24 cents; it is claimed, in double-column 10, that if the Minnesota rates were adopted for that haul, the Minneapolis & St. Louis would earn but 12.98 cents for its haul of seven miles, if that should be estimated upon the first haul of seven miles in the Commission's order, and but .98 of a cent if its proportion should be based upon the last seven miles of the through haul. The rate at present is 60 cents, and the Minneapolis & St. Louis receives 24 cents of that amount. Will you please state what percentage of the through rate is received by the Minneapolis & St. Louis?

A. 40 per cent.

Q. The rate allowed by the Commission's order, as shown by this exhibit, for merchandise of the first class on a haul of 289 miles, is 68.84 cents. What is 40 per cent of that aomunt?

A. 27.5 cents.

Q. In the next subdivision, for a haul of 414 miles, it is claimed, upon the same theory, that in place of 24 cents now received by the Minneapolis & St. Louis, it would only receive 17 cents, or $1.96, as you took the first or the last portion of the haul; and the Commission's rate for a haul of that distance would be 70.80 cents, and will you please give me 40 per cent of that amount?

A. 28.32 cents.

Q. And the present amount received is 24 cents. Ex. 26—Tittemore, in the Minneapolis & St. Louis case, shown witness. Is that table constructed upon the same theory as explained

by you with reference to the other tables?

A. Yes, it is.

Mr. O'BRIEN: If I have not already done so, I offer in evidence Defts.' Exs. YY and ZZ and Defts.' Ex. 3-A.

Q. Have you prepared a tariff to towns in Dakota upon the Northern Pacific railway, based upon an extension of the rate allowed by the Commission, from the Twin Cities to Moorhead in the state of Minnesota?

A. I believe I did; I could tell better by looking at it.

Q. Is that it? (showing witness paper.)

A. Yes. Yes, I did.

Q. And in connection with it a map showing the line of the Northern Pacific Railway from Moorhead to Bismarck and of the Soo Railway from Tenny, that being the point where the Soo road crosses the state line, to Bismarck in the state of North Dakota?

A. Yes, sir, I did.

The statement last shown witness was marked for identification "Defts.' Ex. 3-B—Flinn."

Q. Now, will you please explain the table and map which have been marked Defts.' Ex. 3-B—Flinn?

A. This table was made up for the purpose of showing what the old rate was at Moorhead and the rate under the Commissioners' schedule, and then a rate that was proposed so that if the Northern Pacific considered it necessary to reduce their rates to conform to the reductions in Minnesota, how that reduction at the state line could have been absorbed at a much shorter distance than the Northern Pacific took in order to bring the rates to a point where they met their old rate.

Q. Go on.

A. I took the old rates and put them on that map, which is shown on there under the "explanation of terms" as "O," old rates from Minneapolis, and following those I put the new rates from Minneapolis, and then the proposed rate from the

same point, and in the next column showed the miles of the haul. Now, in looking at the table that is with that map, you will see that the rate at Moorhead is 67 cents.

Q. The old rate?

A. The old rate at Moorhead is 67 cents; that is first class, understand, and it is advanced two cents in some places and one cent in others, and again two cents in another place, and so on down to the end of the distance used—Bismarck. Now, instead of doing that, advancing it by uneven steps, I took in that proposed scale of rates, and added a constant quantity of two cents, using a 54.1 cent rate to Fargo, and going from that to 56, which is a cent and nine-tenths, and from that on adding two cents to each station's rate until it reached Buffalo, 275 miles, where it would meet the old rate; and, according to that method of figuring it out, there would not have been any occasion for reducing the first class or any other class rates beyond Buffalo, even if it had been necessary to make any reduction.

Q. And what is the distance of Buffalo from Fargo?

A. 37 miles—really 36; I took the distance from Moorhead.

Mr. O'BRIEN: This exhibit Defts.' Ex. 3-B is offered in evidence.

CROSS-EXAMINATION.

By Mr. BUTLER:

Q. While it is fresh in my mind we will refer to your last exhibit, which is marked 3-B, first. See if I understand it: looking at the table attached to the map, as I understand it, you have the names of the stations, beginning with Moorhead, on the Northern Pacific road, and running west, in the first column?

A. That is it, sir.

Q. Then, in the next column, you have the interstate rate from St. Paul to Fargo and stations beyond, as the same existed before the application of the merchandise rate which took

effect November 15, 1906?

A. Yes, sir.

The MASTER: From Minneapolis it says.

Q. It is from Minneapolis?

A. From Minneapolis.

Q. And in the next column, under the word "new" is expressed the rate to Moorhead, first, 54.1?

A. Yes, sir.

Q. And, following with Fargo and towns westerly to Bismarck, are expressed the rates which you understand the Northern Pacific Company has put into effect by reason of and since the taking effect of the order of the Commission here in controversy?

A. Yes, sir.

Q. The next column is a proposed set of new interstate rates which you think could have been put in instead of the rates which the Northern Pacific did in fact put in?

A. Yes, sir, that is right.

Q. The purpose of this paper and map, as I understand it, is to show to the Court that the interstate rates on class merchandise from Minneapolis to Dakota points, beginning at Fargo, would not necessarily be destroyed or knocked down by the application of the state rates as far as Bismarck, but only as far on the Northern Pacific road as Wheatland; is that the town, or Buffalo?

A. As far as Buffalo.

Mr. HOW: Magnolia.

Q. They come together at Magnolia?

A. Yes, Magnolia.

Q. That is your idea about it?

A. Yes, sir.

Q. And you have, in your direct examination, shown to the Master, arithmetically, how they could be brought together, that is, the old rate and the new rate, following the reduction

made by the Commission in Minnesota, in a shorter distance than from Fargo to Bismarck?

A. Yes, sir.

Q. Are you of opinion, Mr. Flinn, that you have given distance enough there?

A. I think so.

Q. Do you feel quite certain that it could not be shortened any?

A. Why, it could be shortened, yes.

Q. Well, why not shorten it some more, then?

A. Well, because I thought that that was giving them a fair increase between stations.

Q. The old rate increased about a cent from station to station?

A. In some places, and some places two cents.

Q. Yes, but there is no increase in any of the scheme between Moorhead and Fargo; is there?

A. No, sir.

Q. In your judgment there cannot be? As a practical matter, isn't that true?

A. I don't think there could very well be any.

Q. That is, on your experience as a railroad man and as a rate-maker for the state, you believe that the rates from Minneapolis to Moorhead and from Minneapolis to Fargo must be alike?

A. Yes, for the reason that the railway companies have always maintained the same rates at both those points.

Q. Well, and for the reason that the points are close together, too?

A. Yes, practically one city.

Q. One in one state and the other in the other, the depots are about a mile apart; I think they call the railroad mileage about one mile.

A. About a mile.

Q. And, whereas, the increase from Fargo to Dalrymple was four cents, under the old scheme, you would increase it ten cents from Fargo to Dalrymple under the new scheme, would you not? The old rates before the disturbance differed four cents (since the application of the Minnesota rates) your scheme would be to make the difference ten cents there, would it not?

A. Yes, for those distances.

Q. And what distance would that be?

A. To Dalrymple?

Q. Yes.

A. 20 miles.

Mr. HOW: 18 miles.

WITNESS: Yes, 18 miles from Fargo.

Q. And what rate per ton per mile would that be?

A. Under the proposed rate?

Q. Yes, under your proposed rate.

A. About eight and one-half cents.

Q. Eight and one-half cents per ton per mile; and it would have been about four and one-quarter or 4-10 of that; it would be about 3 1-3?

A. Based on what, Mr. Butler?

Q. Before, in the old rate, in the first column, where the difference was only four, you would change the rate per ton per mile there from about three and one-third cents to eight and one-half cents, wouldn't you?

A. I didn't quite understand you. I figured that on the entire rate, not on the difference. I figured on the entire rate.

Q. Well, I meant the difference.

Mr. O'BRIEN: I think you had better figure it again; it can't be 8 cents from Minneapolis to Dalrymple.

Mr. BUTLER: This is first class.

WITNESS: 8½ cents per ton per mile; that is $21.80 a ton. The first class rate to Moorhead is 4.36 cents under the Com-

mission's order. I misunderstood his question.

Q. Calling the distance 20 miles, for convenience in figuring, and the increase 10 cents per hundred pounds at first class, as you propose, gives me the rate per ton per mile for the 20 miles.

A. That would be just 10 cents.

Q. And it was just 4 cents before the Minnesota rates went into effect?

A. Yes.

Q. I want to compare this 20 miles that we have last referred to with the last 20 miles in Minnesota. What was allowed for the 20 miles between 218 and 238, according to your tariff?

A. It would be about 2 cents.

Q. It would be 2 cents. So this scheme that you propose would make the railroad companies charge 20 cents?

A. 10 cents.

Q. 10 cents for the haul of 20 miles that we mentioned from Fargo to Dalrymple, and would only allow 2 cents for the 20 miles next east of Moorhead?

A. Yes, sir.

Q. In other words, the rate would advance five times as fast after passing the line of the state as it does approaching the line, five times as much per mile added for the haul?

A. Per ton per mile, yes.

Q. And that is the way you think that slack ought to be taken up?

A. I didn't say that I thought it should be done that way; I said it could be done that way.

Q. But you don't think that would be right, do you, or a practical or fair or sensible or just way, do you?

A. Well, inasmuch as it is done in the same way in lots of other places by the railroad companies, I don't see why it wouldn't be.

Q. Do you think it is a just way, no matter who does it or where it is done?

A. No, I don't personally.

Q. You think it is wrong, don't you, and isn't justified from any sound theory, or any sound theory of rate-making, don't you?

A. No, I don't believe it is justified, myself.

Q. You can't think of any reason on the face of the earth, can you, why the rate allowed for the haul should increase upon crossing the Red river of the North, on the western boundary of this state, in any degree, much less than five to one?

A. Well, I don't know of any real reason, no, as I say, no more than that the railroad companies do that same thing in lots of other places.

Q. You think the line is up and down sometimes?

A. Yes, sir.

Q. Now, if this were projected graphically upon a chart, such as some of the charts that have been introduced in evidence here in connection with some of the testimony offered by the Complainants, there would be indicated a sharp rise as soon as you get to the river, wouldn't there? You understand what I mean?

A. Yes, almost as soon as you got to the river.

Q. Well, just as soon as you passed Fargo?

A. Just as soon as you passed Fargo.

Q. That expression is called "grading up", isn't it?

A. I believe it is.

Q. Now, this exhibit relates to class?

A. The first class rate is always used as an example.

Q. You haven't made a similar exhibit relatng to commodities?

A. No, I have not, Mr. Butler.

Q. This exhibit here is based on first class?

A. Yes, sir.

Q. And the same thing would be true with respect to each of the other classes named in this schedule; the difference in figures, however, would not be the same, but, relatively, it would be the same thing; in other words, you would grade up all the classes alike?

A. Yes, where it was necessary to do so. Some would run out at one place and some at another.

Q. And the percentage of increase would be about the same, about five to one?

A. Not in all the classes.

Q. That is because the same relation didn't exist in the old class rates as exists in the new?

A. Yes, sir, that is the very reason. There was no percentage relation between the classes in the old rates.

Q. The relation of first class to the others was not so definitely fixed in the old schedule in force before your order took effect as it is in your order?

A. That is right.

Q. For that reason, the percentages would not be exactly the same, but they would approximate about the same, would they not?

A. Well, yes, I presume they would.

Q. Now, about grain coming in, you haven't made a table how that would work, have you?

A. You mean based on the law, Chapter 232?

Q. Yes.

A. No, I haven't made any table of that, but I know that the—

Q. Could you tell us from memory what the difference on the minimum carload would be between Fargo and Moorhead, comparing the rate proposed in the law with the rate in force at the time the law was passed?

A. I don't believe there would be any difference at all. I think that the rate proposed in Chapter 232 made the rate

that is at present carried from Fargo or Moorhead.

Q. So there is no reduction from those points?

A. I don't believe there is any at all. If there was any, it was very slight.

Q. Can you tell by looking at that map?

A. You could tell by referring to Chapter 232, if you have a copy of it here. There would be a slight difference on wheat.

Q. How much?

A. .8 of a cent.

Q. How much would that be on a carload of wheat, such as is ordinarily hauled? I don't ask you to take the maximum prescribed, but what is about the average tonnage per car now-a-days of wheat?

A. I presume it will run to 50,000 pounds; 25 tons.

Q. What would that difference be on 25 tons of wheat?

A. About $4 a car.

Q. Do you think that any such difference between Fargo and Moorhead on wheat destined to Minneapolis or Duluth is right?

A. It is about what would be allowed for a switch of that distance.

Q. You think for one mile added haul that that would be a fair allowance?

A. Yes, I think that would be very fair for switching a car that far. It is a case of doing that.

Q. It is not a case of doing that as a matter of practice. This is not a switching matter, is it?

A. No, but you are putting it in the light of extending those rates into Fargo, and I say the carriers themselves have carried those rates, and they are, all the time.

Q. Now, I was asking you for one mile of added haul, not by any switching charge or terminal service, but for one mile of added haul, assuming that that applies to a load of grain at Fargo and this to a load of grain at Moorhead, whether you

think two points a mile apart, whether in the same state or not, ought to have such a difference for the haul to Minneapolis?

A. Yes, I think that is not any too much.

Q. So you think that would be true down at St. Cloud do you?

A. Yes, I don't see why not.

Q. What rate per ton per mile would that be, that $4 per car, for that mileage hauled?

A. It would be 1.6 cents per ton per mile.

Q. And on the haul from Moorhead in, what is it to Minneapolis?

A. About 8.2 mills.

Q. Now, do you want to change your first answer? That is cents, isn't it, in the first place?

A. No, it is not.

Q. Now, suppose these two towns, a mile a part, were in the same state, and that difference of rate maintained on grain in to Minneapolis, would you be of opinion that it was discrimination, one against the other?

A. Well, not necessarily, no.

Q. You think it wouldn't be?

A. No.

Q. The circumstances and situation of both places being alike or similar, you think it would not be discrimination?

A. I don't think so.

Q. What would be the difference of freight on a carload of coal from Duluth to Moorhead and a carload of coal of the same weight from Duluth to Fargo, under the act and under the rates as they were when the act was passed?

A. I haven't got the rates on coal here from Duluth.

Q. About $10 difference, wouldn't it?

A. I couldn't say, I am sure.

Q. Can you give it on lumber?

A. No, that was just made on merchandise. I didn't pre-

pare any table on the commodities at all.

Mr. O'BRIEN: Well, haven't you got the haul from Duluth, figures giving the distance from Duluth and the tariff, there?

WITNESS: Yes,

Mr. O'BRIEN: And the Northern Pacific tariff on coal to Fargo?

WITNESS: Possibly I have. The old rate on hard coal was $2.10 a ton.

Q. To both Fargo and Moorhead?

A. Yes, sir.

Q. What is it now? What would it be if this act was allowed to go into effect?

A. Hard coal would be $1.68.

Q. It would be $10.50 difference, would it not?

A. 42 cents.

Q. It would be $10.50 on a carload of hard coal, would it not?

A. Based on 25 tons?

Q. Yes.

A. $10.50, yes.

Q. Assuming those two towns, one mile apart, to be in Minnesota, would you think that rates $10.50 apart, from Duluth to those points, for hard coal, would be discrimination?

A. I don't believe I quite follow that question.

Q. Well, suppose that these two towns were in Minnesota, under the jurisdiction of your commission, and the railroads had put into effect a rate which charged $10.50 more for hauling the coal to the town one mile farther from Duluth than it did to the other, would you think that discrimination?

A. No, I don't hardly think I would.

Q. You don't think you would. Is there any such situation in the state?

A. At present.

Q. Yes.

A. I don't think there is, for a single mile; there are no stations that close together.

Q. Now, Mr. How has figured the rate per ton per mile four dollars, and he makes it 16 cents per ton per mile.

Mr. How: On wheat.

Q. Makes it ten times as much as you make it; I would like to have you agree on it, if you can.

A. Yes, that was right,—what I said in the first place, 16 cents.

Q. Now, do you think it right to charge 16 cents per ton per mile for that extra mile, as against less than one cent per ton per mile for the whole route? Do you think that is discrimination?

A. Why, I don't think you can compare the rate for one mile as compared with the distance of 250 miles; that is the rate per ton per mile.

Q. Well, but just let us compare that, no matter whether you think we ought to or not. Assume that to be the situation,—that for that added mile, instead of less than a cent per ton per mile there is added 16 cents per ton per mile, do you think that right? Don't you think that would be discrimination, Mr. Flinn?

A. Why, as I say, Mr. Butler, allowing, of course, for the fact that there isn't any such a thing as that, that is, there is no comparison between a haul of a mile and the haul of 250 miles; but, assuming, as you say, that it was really a condition, I don't believe it is fair.

Q. You think it would be discrimination, do you not—

A. Yes.

Q. —to charge $4 a car per mile? For that rate it would be nearly a thousand dollars to get a car in from Fargo to Minneapolis, wouldn't it?

A. Yes.

Q. 248 miles?

A. Yes; and that is the very reason why I say that you can't make a comparison between the two.

Q. But suppose we compare the next distance. What is the station nearest to Moorhead? Let us see what the difference is from the station nearest to Moorhead.

A. This way?

Q. Yes, where wheat is taken off.

A. I suppose the billing that comes in there is Dilworth.

Q. How far is Dilworth?

A. Dilworth is really their yard; it is not a place to compare anything with.

Q. Does it take a tariff?

A. It has a tariff.

Q. Your law would apply to it, wouldn't it?

A. Yes, I presume it would.

Q. How much less would the rate be from Dilworth than from Moorhead to Minneapolis, under your proposed rate?

A. It would be just the same thing.

Q. Well, what is the station next that it would be different at?

A. Glyndon.

Q. How far is Glyndon from Moorhead?

A. About ten miles.

Q. And what would be the difference for hauling in twenty-five tons of wheat from Moorhead to Minneapolis and from Glyndon to Minneapolis?

A. Two-tenths of a cent.

Q. And that would be, in dollars, what?

A. Would be one dollar.

Q. For how many miles?

A. Ten miles.

Q. Do you think it right to charge only a dollar for ten miles east of Moorhead and four dollars for one mile west of Moorhead on grain coming in to the terminals at Minneapolis?

A. As I said before, you can't make me see any comparison between the two hauls.

Q. I don't ask you to acquiesce in our right to compare it, but assume that we have that right, don't you think such a situation would present the grossest kind of discrimination?

A. Well, I wouldn't want to answer a question of that kind, because I don't think that it is a fair question. It doesn't represent anything.

Q. Now, if you maintain the rate of $4 per mile for that car all the way in, you see what would happen, don't you?

A. Yes, that is just the very reason why I say there is no chance to compare them.

Adjourned until Thursday, February 4, at 10 o'clock, A. M.

FEDERAL BUILDING, St. Paul, Minn., February 4, 1909.

The hearing was resumed at 10 o'clock A. M.

ALLAN L. FLINN,

recalled for further cross-examination, testified:

By Mr. BUTLER:

Q. Mr. Flinn, the merchandise rates to and from the border points on the Red river were the same, were they not, before the passage of this order by the Commission which took effect November 15th; that is to say, Grand Forks and East Grand Forks took the same rate?

A. Yes, sir; they did.

Q. Wahpeton and Breckenridge took the same rate?

A. Yes, sir.

Q. And Moorhead and Fargo?

A. Yes, sir.

Q. These towns are all on the Northern Pacific line?

A. Yes, sir.

Q. And just one mile apart, by railroad measurement, the

fact being that the boundary line is the Red river, and there is a town on each side of the Red river in these three localities?

A. That is correct, yes.

Q. And the immediate effect of the application of the merchandise rates to the Minnesota points was to make a difference in rates between the Minnesota towns and the North Dakota towns to the extent of the amount of reduction for the mileage from Duluth to each and from the Twin Cities to each?

A. Yes, sir, that is correct.

Q. Since that time you understand, do you, that the railroad companies have equalized the rates by reducing the interstate rate at these points to a level with the state rates as prescribed by the Commission?

A. Yes, sir, that is true.

Q. That is true on the Northern Pacific, the Great Northern and the Soo, with respect to the merchandise rates, at all the border points on all these roads?

A. It is true as far as the Northern Pacific and Great Northern are concerned, but I don't believe the Soo have any what would be called border towns.

Q. Not so close together?

A. No.

Q. But hasn't there been a general scaling down for a distance on the Soo, after the western boundary of Minnesota is passed, in a manner something as you have indicated here in your Exhibit 3-B? whether it may be a greater or less distance I don't care to inquire.

A. Yes; there has been a scaling down of rates there.

Q. Or, rather, a grading up to the old rate as the distance runs out into Dakota?

A. Yes, you might put it that way.

Q. That is called "grading up," isn't it?

A. Yes, that would be grading up the rate.

Q. So the percentage of reduction in these merchandise rates

indicates the percentage of difference that immediately followed the application of the state rate between the towns farthest west in Minnesota and the next town in Dakota?

A. Yes.

Q. So the immediate result of the application of these rates until the interstate rates had been brought down to meet them, was inequality between the stations along these northern lines?

A. You mean as far as stations right on the river were concerned?

Q. Yes.

A. Well, I believe, Mr. Butler, that the railway companies made the reduction at points on both sides of the river at the same time.

Q. Yes; that is, on the same day that they put in the East Grand Forks, Moorhead and Wahpeton rates, they also put in the same rates to the towns across the river in Dakota, as you understand it; they reduced the local rate and the interstate rate at the same time?

Mr. How: Mr. Baird has so testified; I think that is the fact.

A. They reduced the rates to North Dakota points on November 28th.

Q. Less than two weeks after the taking effect of the local state rates?

A. Yes, sir.

Q. That is, on the merchandise?

A. Yes, sir.

Q. Now, in your judgment, it was necessary to do that in order to preserve anything like equality of rates between these towns involved, wasn't it?

A. Well, I wouldn't say that; I think that it was just because the practice had grown up among the railroads of carrying the same rates there that they deemed it necessary to still carry them.

Q. When the rates were the same between Fargo and Moorhead, we will say on the class rates, from Duluth and from the Twin Cities, are you of opinion that there was any unjust inequality or discrimination in favor of or against either town?

A. No, I don't think there was.

Q. When the reduction was made and during these two weeks that there was a difference between the rate to Moorhead and the rate to Fargo from the Minnesota distributing centers of St. Paul, Minneapolis, Minnesota Transfer and Duluth, do you think there was any unfair inequality in the rates, any discrimination in favor of or against either town?

A. I think the fairness of the Minnesota rate would have to be the way to measure that.

Q. Well, I know, but let us just assume now that these two towns were in the same state; let us forget that there is a state boundary, for the purposes of your answer, would you think that the inequality to the extent of this reduction was reasonable or unreasonable?

A. I should think it was unreasonable for the length of the haul.

Q. Yes, unreasonable for the length of the haul; and you would say if these two towns were in the same state, or under the same control with respect to rate-making, whether that control be governmental or railroad, that any such difference in rates would be, manifestly and obviously, too great,—unfair, would you not, as between these towns?

A. Yes, I think the difference between the stations would be too large.

Q. Altogether too large. As a matter of fact, you would say, would you not, that there ought not, as a matter of fairness in the making of rates, to be any difference between these points?

A. No, I wouldn't say that; I think there should be a difference.

Q. You think there should be a difference?

A. Just as there is between all other stations.

Q. On the distance basis?

A. Yes, sir.

Q. And if the boundary of Minnesota was moved westwardly so as to take in these Dakota points that we have been talking about, it would be your idea that the schedule should apply?

A. Yes.

Q. And increase the rate to the extent of the addition for a one-mile haul?

A. For a five-mile haul rate which a one-mile haul would take.

Q. A one-mile haul would take a five-mile rate?

A. Yes.

Q. I thought where it was more than a half it took the five-mile rate; and any excess takes five miles, does it?

A. Yes, according to the schedule of rates that was gotten out it does.

Q. I mean according to the order.

A. Yes, sir; that is what I mean.

Q. 238 miles takes the same rate as 239, under the order, does it not?—take Fargo and Moorhead.

A. Yes, they would both take the 240-mile distance rate.

Q. So under your tariff, itself, if Fargo and Moorhead were in the same state, they would take the same rate, would they not?

A. Yes, they would take the same rate.

Q. How about Grand Forks and East Grand Forks, would they take the same rate, or would that split at the five-mile point?

A. I couldn't tell.

Q. Have you the mileage?

A. I have the mileage right here, I think.

Q. If the mileage breaks at the five-mile point, then it would

fall into different classes, as I understand it, but if they both fell within the same five, they would take the same rate?

A. Yes, they both take the 320-mile rate.

Q. Is that true between Breckenridge and Wahpeton?

A. That would not be true of Breckenridge and Wahpeton.

Q. They would separate,—five miles?

A. Five miles apart.

Q. Now, fairness in rate-making, assuming that the same authority, whether the companies or the government, were making the rate, would require, in your opinion, those merchandise rates to be the same, except at Breckenridge and Wahpeton, and the difference would be the amount of the hauling charge for five miles?

A. That is correct.

Q. And after the state rates had been applied to the Minnesota points, the only way to make them the same would be for the railroad companies or the government to reduce the interstate rates; isn't that true?

A. It would be true as far as those points were concerned, to a certain extent, but that schedule of rates, as I said before, was made for Minnesota and not for North Dakota.

Q. I gained the impression that it was intended for Minnesota—

Mr. O'BRIEN: Well, he evidently had the same impression as your impression was, from the questions.

Q. —but the only way that the equality which you say ought, in fairness, to exist could be maintained, would be by the reduction by the railroad company or by the government of the interstate rates to which we referred; isn't that true, Mr. Flinn?

A. Well, do you want my private opinion about it, or just looking—

Q. I want the fact about it.

Mr. O'BRIEN: That is what you are asked for, Mr. Flinn, your opinion.

A. Well, then, my opinion is that it should be reduced, but it is not the opinion of the railway people.

Q. Well, that is what I mean; and the only way that the equality which you say ought, as a matter of fairness to exist, could be maintained would be for the railroad companies or the government to reduce the interstate rates; that is the only way it can be done, isn't it, Mr. Flinn, as a matter of fact?

A. Yes, after they decided on the fairness of the rate that had been reduced.

Q. Yes; that is, if your rate was right, if the Minnesota rate was right, your idea is that all considerations of fairness require the railroad companies to reduce the interstate rates that we have been talking about, accordingly?

A. If the Minnesota rate was fair, yes.

Q. If the Minnesota rate is fair, down must come the other rate; that is the fact, isn't it?

A. Why, I should think so, in fairness, my opinion of it.

Q. You consider, do you not, (and I gained it from your testimony in direct examination) that, in the matter of rate-making, equality of rates between persons and communities is a very important consideration?

A. I think it is, Mr. Butler.

Q. And usually considered, is it not more important than the amount of the rate, within any reasonable limits?

A. Oh, yes, I presume so. I wouldn't answer that directly.

Q. So now, then, if we assume that the Minnesota rate is too low to these border points, there can't be any equality then (which is so desirable) without making the interstate rates to the Dakota border towns also too low, can there?

A. No, there could not.

Q. The inequalities which resulted in the application of the Minnesota merchandise rates were so great, in your opinion, that if they were continued they would have the effect of very seriously impairing, if not destroying, the commercial welfare

of the Dakota towns on the border, isn't that true?

A. That is something that I didn't stop to consider, Mr. Butler.

Q. You would not be able to express an opinion?

A. No, I wouldn't express an opinion on anything of that kind. I know nothing of commercial business.

Q. Well, you do know, as a matter of fact, that, as compared with Moorhead, Fargo is the much larger town?

A. Yes, I know that is true.

Q. Much more important in its commercial transactions?

A. Yes, a great deal, I understand.

Q. And that is also true of Grand Forks and East Grand Forks?

A. Yes, it is.

Q. And is it true of Breckenridge and Wahpeton? I don't know myself.

A. I don't know, either; I have never been to those places. I have been to the others, but never to Breckenridge.

Q. Now, your Ex. YY was gotten up for the purpose of showing that the railroads thereon named, to-wit, the Omaha, the Great Western, the St. Louis, the St. Paul and the Rock Island, did not, in fact, do as the northern roads have done, to-wit, reduce the interstate rates upon the application of the rates in the Commission's order—Of November 15, 1906, was it not?

A. That was the object of it.

Q. That exhibit shows, does it not, on its face, the difference of rates existing on each line crossing the state between the nearest towns, one in Minnesota and one in the adjoining state?

A. Yes, sir.

Q. And also what the difference was made to be by the application of the rates in question?

A. Yes, sir.

Q. Calling attention to the Minneapolis & St. Louis line, as

referred to on your Ex. YY, that line goes into Iowa on three different branches, does it not?

A. It goes into Iowa on two lines and into South Dakota on one.

Q. Twin Lakes, Minnesota and Emmons, Iowa, are six miles apart, are they not?

A. Yes, sir.

Q. Formerly the difference in rates from the Twin Cities to those points was one cent, but now, since the reduction made by your Commission, the difference is 5.4 cents, is it not?

A. Yes, sir; 5.4 cents.

Q. The difference between Twin Lakes and Lake Mills was heretofore two cents; now it is 8.4 cents, is it not?

A. 8.4, yes.

Q. And, heretofore, the difference between Twin Lakes, Minnesota, and Leland, Iowa, on that same branch, was 3 cents; now it is 8.4 cents, is it not?

A. Yes.

Q. Now, on the other line, running into South Dakota, the difference in distance vetween Marietta, Minnesota, and Revillo, South Dakota, is seven miles; formerly there was 1 cent difference in the class rates from Twin Cities to those points, but now, since your reduction, there is 6.7 cents difference?

A. .7 difference.

Q. And on that particular line of the Minneapolis & St. Louis the interstate rate has, in fact, been reduced as it is, by the northern roads?

A. Yes, sir; it has.

Q. That is one instance, on the Minneapolis & St. Louis, where, following the reduction in the Minnesota rates, the interstate rates also came down?

A. I don't think that is true, Mr. Butler. I think that that reduction—

Q. Was it before?

A. No,—I think that reduction was brought about by the complaint of the people at Sioux Falls.

Q. Well, I was not asking the reason, I was asking the fact in relation to the time. Did it come down after you reduced in Minnesota, or before?

A. I couldn't tell you the exact date it was reduced without looking at the tariff.

Q. Now, on the other line of the Minneapolis & St. Louis, the distance from Dunnell, Minnesota, to Huntington, Iowa, is five miles; formerly the difference in class rates from Twin Cities to those points, was 2 cents; now it is 8.6 cents, is it not?

A. Yes, sir.

Q. And from Dunnell to Estherville, formerly the difference was 4 cents, now it is 10.4 cents, is it not?

A. 10.6.

Q. Now, Mr. Flinn, before the reduction in Minnesota, in these instances where the inequality has been increased between these towns on the same lines, was there, in your judgment, any unjust inequality or discrimination in favor of or against either towns in any of these pairs of towns to which attention has been called?

A. Looking at the rates as they are here, I don't think there was.

Q. Now, since the reduction and the creation of these comparatively much larger differences, what do you say: are these inequalities fair and reasonable, or are they unfair and unreasonable, in your opinion?

A. Well, in my opinion, they are hardly to be called reasonable, but that apparently is not the opinion of the railway companies, as they still have those rates in.

Q. Yes, or they would still reduce them. Your idea is that, because the railroad companies have not knocked down their interstate rates to agree with the rates in the Commissioner's schedule here in litigation, that that is an expression of their

opinion that the differences existing are in fact just and reasonable; is that your idea of it?

A. Well, either that or they are waiting to hear what the Court will say as to the fairness of the Minnesota rate.

Q. Now, if you were the traffic man of this Minneapolis & St. Louis Railroad Company and had power to make the rates as you thought them to be just, independent of action by the State or the Government, would you or would you not, maintain the differences now existing on these three lines crossing the boundaries of Minnesota, as to the border towns?

A. Well, that is a pretty far-fetched question for me to answer, Mr. Butler, but—

Q. How so?

A. Well, imagining that I am the traffic official of the M. & St. L. As far as that is concerned, if I should give my own personal opinion on it, I should say that I would have more trouble convincing myself that it was fair to make a rate at one point and then the next point make it about eight or nine cents higher.

Q. When they are so close together?

A. When they are probably six or seven miles apart.

Q. Suppose the town that took the higher rate here (the interstate rate) through its shippers, commercial business, etc., were to appeal to you, as the rate-maker of the railroad in question, could you think of any way of justifying those differences?

A. No, I don't believe I could.

Q. It is your opinion, is it not, that those differences cannot be justified?

A. That is my own personal opinion.

Q. Yes, sir, that is your view of it. Now, let us look at the line of the Omaha Company.

A. That includes the Northwestern, too, Mr. Butler, I don't know whether you noticed that or not.

Q. No, but this table includes the Omaha and Northwestern as one, doesn't it?

A. Yes, in together.

Q. From Elmore, Minnesota to Ledyard, Iowa, the distance is seven miles. Before the Minnesota schedule went into effect, the difference in rates was 1 cent from the Twin Cities to those points?

A. 11 cents.

Q. Yes, 11 cents. What is it now,—14½?

A. 14½.

Q. And on another line of the same system, Bigelow, Minnesota, to Sewal, Iowa, is eight miles; the former difference, before the Minnesota schedule went into effect, was 2 cents, now it is 7.7 cents; is that right?

A. Yes, sir; that is right.

Q. On another line, what is known, I think, as the Doon branch, from Ash Creek, Minnesota, to Rock Rapids, Iowa, is seven miles; formerly the rates were the same, now the difference is 6.8 cents; is that right?

A. That is correct.

Q. And on another line, going into South Dakota, Beaver Creek, Minnesota, to Valley Springs, South Dakota, the distance is six miles; formerly the rates were the same, now the difference is 6.8 cents?

A. That is right.

Q. Now, in your opinion, was there discrimination, either before or after the change of rates; and, if either, which?

A. Well, I think that that should be measured by the fairness of the Minnesota rate, as I said before.

Q. Do you think that is one of the instances that the fairness of the interstate rate ought to be tested by the fairness of the state rate?

A. I think the state rate, as a whole, ought to be tested as to its fairness on its own merits.

Q. You think the two ought not in any way to be compared?

A. Oh, I don't say that; comparison, of course, would have some bearing, probably, on the evidence as to its fairness.

Q. Your view is not that the fairness of the interstate rates should be determined by the fairness of the state rates, is it?

A. No, or that the fairness of the state rates should be determined by the fairness of the interstate rates.

Q. But you do agree, do you not, Mr. Flinn, that, with respect to situations such as I have called attention to on the Omaha line, the inequalities now existing as the result of the reduction of the state rates and failure to reduce the interstate rates, are unfair and unjust and too much; don't you think so?

A. Personally I think they are, Mr. Butler.

Q. Now, let us look at the Chicago and Great Western line as indicated on your Ex. YY. Taopi, Minnesota, to Bailey, Iowa, is seven miles. Formerly the difference on rates on merchandise from the Twin Cities to those points was 3 cents, now it is 9.3 cents?

A. 9.4 cents.

Q. And on another branch, Lyle, Minnesota, to Milton, Iowa, the distance is six miles; that is one of the instances where the interstate rates have been reduced and do in fact correspond with the state rates, isn't it?

A. They have been reduced at that point but not for nine months after the Commissioners' rate went in.

Q. They did in fact maintain the difference for nine months?

A. Yes.

Q. But then made the adjustment?

A. Yes, sir.

Q. On another line of that same company, Leroy, Minnesota, to David, Iowa, is a distance of twelve miles; formerly the rates were the same, but on the taking effect of the Commission's order the difference was made 5½ cents?

A. 5½ cents.

Q. Now look at the line of the Chicago, Milwaukee & St. Paul; Reno, Minnesota, to New Albin, Iowa, is eight miles; formerly the difference in rates from Twin Cities to those points was 1 cent; since the taking effect of your order it is 6½ cents?

A. Yes, sir.

Q. Between Dresbach, Minnesota, and La Crosse, Wisconsin, is eight miles; formerly the rates were the same, now there is a difference of 1.1 cents by reason of the state reduction?

A. I don't know as to that.

Q. Did the state reduce to Dresbach?

A. Yes, sir.

Q. How much did it reduce to Dresbach, can you state without trouble?

A. Yes, it is right here. It reduced it 4.5 cents.

Q. And what does your difference show there on your exhibit?

A. It shows that difference.

Q. Then I made a mistake in subtracting. What should it be?

A. That is, the difference between the old and the new rates at Dresbach, do you mean, or the difference between Dresbach and La Crosse?

Q. Dresbach and LaCrosse.

A. Oh, that is just one-tenth cent.

Q. LeRoy, Minnesota, to Chester, Iowa, eight miles, formerly the difference was 1 cent; on the reduction of the Minnesota rates by the Commission the difference was made to be 7½; is that right?

A. Yes, sir.

Q. Lyle, Minnesota, to Otranto, Iowa, is four miles; formerly the difference was 3 cents, and on reduction by the Minnesota Commission the difference is made 8.4 cents, is that right?

A. That is right, yes.

Q. From Airlie, Minnesota, to Flandreau, South Dakota,

nine miles, the interstate rates on that branch of the Milwaukee road have been reduced so as to now correspond with the state rates?

A. Not with the state rates, Mr. Butler; with the Watertown or Sioux Falls rate.

Q. Well, they are the same to the border towns, are they not, now?

A. No, sir.

Q. Airlie and Flandreau take the same rate now, do they not?

A. No, sir.

Q. What is the difference?

A. 55½ as against 57; a cent and a half difference.

Q. But there have been reductions on that line?

A. Yes, sir.

Q. That is to meet competition, you think?

A. Yes, sir; I am sure of that, Mr. Butler.

Q. Wheaton, Minnesota, to White Rock, South Dakota, presents a situation where there was like reduction there to meet competition or equalize rates; at any rate, they are in correspondence, are they not?

A. Yes, sir.

Q. And that was for the purpose of meeting the short-line rate from some place to Watertown?

A. No, sir; the short-line rate to Breckenridge.

Q. Of what company?

A. The Great Northern,—210 miles.

Q. Well, does the Milwaukee go to Breckenridge, too?

A. They go to Wahpeton.

Q. Well, now, just explain that. From the Twin Cities to Breckenridge the Great Northern has the short-line?

A. Yes, as compared with the Milwaukee.

Q. It has a shorter line than the Milwaukee?

A. Than the Milwaukee has to Wahpeton, yes.

Q. The Milwaukee doesn't go to Breckenridge at all?

A. No, sir.

Q. But does go to Wahpeton?

A. Yes, sir.

Q. And in order to participate in the Twin City merchandise business to Wahpeton, it is necessary for it to meet the Great Northern's short-line rate to Breckenridge?

A. The Milwaukee people considered it so.

Q. Well, it is so, isn't it? You would consider it so if you were running that railroad, wouldn't you?

A. I don't believe I would, Mr. Butler.

Q. You don't think the business would justify it?

A. No, sir; I don't think so; I don't think there is enough of it.

Q. How many stations did they cover by their blanket before getting to Wahpeton in order to meet the short-line rate to Breckenridge?

A. Five stations.

Q. How many miles of track? Can you tell us at a glance there?

A. 24 miles.

Q. Now, if they had not so blanketed, they would have had higher rates to Wahpeton from the Twin Cities than the Great Northern had to Breckenridge?

A. Not necessarily.

Q. If they had followed the mileage basis?

A. If they had followed the mileage basis, yes.

Q. And applied the maximum permitted by your schedule?

A. They could have applied that maximum at Wahpeton without applying it at intermediate points.

Q. And that would have put their rate at Wahpeton somewhat higher than the Great Northern to Breckenridge?

A. Yes, sir.

Q. The haul to Wahpeton would be interstate?

A. Yes, sir.

Q. They couldn't have had a lower rate to Wahpeton, under the interstate law, than they had to any of the stations between?

A. Yes, they could have done that, and they do do that with coal.

Q. Well, where conditions justify it?

A. Yes, that is just what I mean.

Q. That is to say, certain circumstances and conditions justify an exception to the long-haul and short-haul clause in the Interstate Commerce act, which is the same as a similar provision in your act or the act creating your Commission, is it not?

A. With that exception I think it is the same.

Q. Do you know of any conditions there that would justify the lower rate to Breckenridge on merchandise than to intermediate points?

A. I couldn't tell you anything about that, Mr. Butler.

Q. Unless there were such conditions it would be a violation of the Interstate Commerce act and a crime, wouldn't it?

A. I presume it would. I am not equipped to tell you that.

Q. Now, let us look at the Rock Island as shown on Exhibit YY. Gordonville, Minnesota, to Northwood, Iowa, is five miles on that line; the interstate rates have been reduced to correspond and do correspond with the reduction of the state rates?

A. Not to correspond with our rates, but they have been reduced.

Q. So as not to leave any excessive difference; isn't that true?

A. Yes, that is true.

Q. Bricelyn, Minnesota, to Rake, Iowa, is seven miles; that is another instance where the interstate rate has been equalized with the state rate by the Rock Island, isn't it?

A. To a certain extent, yes.

Q. Where there is no abnormal or improper inequality, in your opinion?

A. Well, there is now 3 cents difference, where, in the old rates, there was only 1.

Q. What would the difference have been if there hadn't been any reduction to Rake, Iowa?

A. The difference would have been 4½ cents.

Q. Round Lake, Minnesota, to Lake Park, Iowa, is eleven miles; formerly the difference was 5 cents; after the reduction in Minnesota, it was made to be 8.7 cents?

A. The distance is nine miles, and the previous difference in rate was 5 cents; now it is 9.7.

Q. Now, Ellsworth, Minnesota, to Little Rock, Iowa, on the Rock Island, is a difference of nine miles, but the Iowa point is nearer to the Twin Cities, isn't it?

A. Yes, that is true.

Q. Which takes the higher rate now since the reduction in Minnesota?

A. The Iowa point.

Q. How much the higher?

A. 6.8 cents.

Q. Notwithstanding that the difference is in favor of the Iowa point by nine miles?

A. Yes.

Q. That difference is too much, isn't it, in your opinion, to be fair?

A. Well, as I said before, Mr. Butler, I don't care to pass any opinion on the fairness of the interstate rates, because that is something that—

Q. Well, just forget that one is interstate and the other is state and call them both of the same class for the purpose of your opinion; just assume that to be the fact.

A. Well, assuming that they were both a state haul, I think

it would be unfair to charge more for a short haul than a long haul.

Q. And if they were both interstate, you would say the same thing of them, wouldn't you?

A. I might think so.

Q. Yes, and you would be willing to say so if you thought so, if anyone asked you what you thought when you were on the witness-stand?

A. Why, yes.

Q. Now, the figures on your Ex. YY indicating rates, relate to first-class?

A. Yes, exclusively.

Q. And the first five classes are less than carload lot classes?

A. The first four.

Q. And the other six are carload lots?

A. Yes, sir.

Q. And what is the minimum in weight for carloads of merchandise? Are they the same in each class? I think the Western Classification fixes, that, perhaps.

A. The Western Classification fixes that at 20,000 pounds for freight classified "third class and higher" and 30,000 pounds for freight classified "lower than third class."

Q. Then for everything that moves in carload lots under the classification 30,000 is the minimum?

A. That would be correct.

Q. And so, in order to get at the difference per carload in any of the situations, we would have to first correct the difference in rates to make it correspond with the class in question, coming down to the proper percentage of first class for the particular class in question?

A. Yes.

Q. And then multiply the rate so corrected by the weight, expressed in hundred pounds, of the minimum carload?

A. Yes sir, that would be right.

Q. And that would show the difference on carload lots in all these instances to which reference is made on your Ex. YY, would it not?

A. Yes; that would be as far as the merchandise is concerned; that is, things that were not moving under a commodity rate, but that were in the classification.

Q. Yes, I mean the stuff that moves in the classification.

A. Yes, that would be true.

Q. And this order did not, as I understand it, substantially change your classification?

A. Didn't affect the classification at all.

Q. It was put in subject to certain amendments that had been made in the course of years, from time to time, by the Commission?

A. Well, and by the classification commission, too. We always accepted those for use in this state.

Q. But I thought the Commission had some that were not accepted by the Western Classification association?

A. Yes, that is true, we have made exceptions to the use of that classification on some articles.

Q. And in such cases the new schedule applied to the classifiction as corrected or excepted to by the Commission?

A. That is correct.

Q. Now, could you, without too much inconvenience, add to the information which you have provided us by Ex. YY, so as to show the differences which would result if the commodity rates prescribed by Chapter 232 were to be applied in Minnesota and no corresponding reductions made in the interstate rates to the nearest towns in the adjoining states?

A. What you mean is to make a table on the same order as that, but in respect to the commodity rates?

Q. Yes.

A. Yes, we can make that.

Q. Will you do that for me?

A. Yes.

Q. You actually made the figures in this merchandise rate as expressed in the Commissioners' order?

A. I made the computations, yes.

Q. And after the plan had been agreed upon by the Commission, of course, you were acting under their authority, but you were the man that did the figuring?

A. Not all of it; I did some of it.

Q. But you had charge of it all?

A. No, Mr. Yapp had charge of it.

Q. And he did some and you did some, was that the way it was?

A. No sir, I did part of it, and some of the additional help we had in the office at the time did some of the mechanical part of the figuring.

Q. Now, being familiar with traffic matters, I suppose you understand, do you not, (I think you so testified here) that the territory in Minnesota to the south of the Twin Cities is, as respects merchandise, territory that is not wholly tributary to the Twin Cities?

A. I don't understand that that way, Mr. Butler.

Q. Do the Chicago lines compete at all for business in southern Minnesota on merchandise?

A. I think they do. You mean from the Twin Cities?

Q. No, I mean from Chicago. The jobbers at Chicago have their men in southern Minnesota and sell their goods there, do they not?

A. Yes, and the jobbers of the Twin Cities do the same thing.

Q. And that is territory that is competitive between the jobbers of Chicago and the jobbers of the Twin Cities?

A. I should say so, yes.

Q. And the jobbers of Milwaukee?

A. Yes sir, I should say so.

Q. And the jobbers of Sioux City?

A. I don't know as to Sioux City.

Q. Now, the jobbers at Duluth and at the Twin Cities, along in the territory served by the Great Northern, Northern Pacific and Soo lines, as far as freight rates from the Atlantic seaboard is concerned on merchandise, have the advantage over all the other jobbers in this country, have they not?

A. Well, I couldn't say taken as a whole, Mr. Butler, but they certainly have a big advantage.

Q. That is by reason, is it not, of the low rates from the Atlantic seaboard to these Twin Cities and to Duluth?

A. Yes.

Q. The Twin Cities are just as far from the Atlantic seaboard as Omaha, St. Joe, Kansas City, within 100 miles or within about 60; isn't that true?

A. I think that is about true, somewhere within a hundred miles or so.

Q. But the Atlantic seaboard rate to these points on the Missouri river on first class is 32 cents higher than the Atlantic seaboard rate to the Twin Cities, isn't it?

A. I think that is correct.

Q. So that water competition has made just that advantage, hasn't it? You said it didn't have much effect on the territory up here, but the water competition has enabled the jobbers of the Twin Cities and at Duluth to get merchandise from the Atlantic seaboard to distribute to their customers, 32 cents on first class cheaper than can the jobbers on the Missouri river, a like distance from the Atlantic seaboard?

A. I don't think that is altogether due to water competition.

Q. You think it is a factor, don't you?

A. I think probably it is a factor.

Q. You think the competition of the Canadian Pacific and the Soo is the other factor, don't you?

A. No, I don't altogether think that, either. I think that the competition between the numerous lines running between

New York, for instance, and the Twin Cities has a good deal to do with that, for it is a fact that they maintain the same rate during the winter that they do in the summer when there is no water competition.

Q. Well, there are quite as many lines, are there not, from the Atlantic seaboard to the Missouri river as there are from the Atlantic seaboard to the Twin Cities or to Duluth?

A. I don't think there are as many to the Missouri river as there are to the Twin Cities. There are probably more than there are to Duluth, though.

Q. From Chicago to the Missouri river?

A. Oh, no, I didn't mean that.

Q. Well, there are certainly more from the seaboard to Chicago than there are from the seaboard to the Twin Cities?

A. Yes, that is true, but what I meant was that the aggregate number of lines running from the seaboard to the Twin Cities would be greater than the aggregate number of lines from the seaboard to the Missouri river taking Kansas City as a point; I think it would.

Q. You may be right, Mr. Flinn. Glance at that at noontime, and we will speak of that again.

A. All right.

Q. Now, it is the Atlantic seaboard rate to the Twin Cities, plus the local rate out, that makes the rate to the dealers in Minnesota, isn't it?

A. That is the common belief of it, anyway.

Q. And if the Twin Cities, by adding the two rates together, enjoy lower rates from the Atlantic seaboard to their merchants than Chicago, then it is called a Twin City territory, isn't it, as far as merchandise is concerned?

A. I believe that is correct.

Q. Have you ever undertaken to find out what part of Minnesota, as between Chicago and the Twin Cities is Chicago territory, and what part is Twin City territory, on the basis

of the Atlantic seaboard merchandise rates plus the rate from the jobber to the customer?

A. No, I have not, Mr. Butler.

Q. Are you aware that that line takes in all of Iowa, strikes Wabasha on the Mississippi river, Farmington, about twenty-two miles from this city, and then diagonally across the state out into the Dakotas, where Chicago is supreme on merchandising?

A. I know that is the commonly accepted idea of it; I don't know that it is true.

Q. You didn't follow the recent litigation before the Interstate Commerce Commission on the complaints of the jobbers in Kansas City, Omaha and St. Joe, that the rates to the Missouri river discriminated against them in favor of the Twin Cities 32 cents on first class?

A. I read the most of that, Mr. Butler; not all of it.

Q. In that case the Commission found, did they not, that the Twin Cities had, and were entitled to have, lower Atlantic seaboard rates, though the distances were the same, because of water competition, and because of the Canadian Pacific and Soo competition?

A. Yes, I think they also added to that on account of their geographical location,—the way they put it.

Q. Yes, sir, they were near the lakes, and the other fellows were near a river that is not navigable. Now, has it occurred to you, Mr. Flinn, that the reason the southern roads named on your Exhibit YY have not been compelled, and have not, in fact, reduced the interstate rates from Twin Cities to Iowa and South Dakota towns, was because the tonnage from the Twin Cities to those towns was comparatively unimportant and because those towns were all in Chicago territory?

A. No, it never occurred to me to look at it in that way, Mr. Butler, and I don't really think that I would have paid

any attention to it if it had, because I don't believe it would be so.

Q. Now, Fargo is not in Chicago territory as between Duluth and the Twin Cities, is it?

A. No.

Q. Grand Forks isn't, is it?

A. No.

Q. Wahpeton is not, is it?

A. No, sir.

Q. Nor none of the North Dakota points?

A. I don't think they consider it so.

Q. And the people of that state are tributary to Minnesota distributing centers?

A. Yes, sir.

Q. And they cannot, like the men down at these little towns in Iowa, that have been mentioned on your Exhibit YY, get better prices, as far as rates are concerned from Chicago jobbers, than they can from Twin City jobbers?

A. I couldn't say as to that, Mr. Butler; I couldn't tell you.

Q. You never investigated the amount of tonnage, did you, which goes to those points from the Twin Cities, on the southern roads, of merchandise?

A. No, I never investigated, but I have billed a good many tons of it.

Q. That was some years ago; that was more than nine years ago?

A. Yes, it is more than nine years ago.

Q. Do you know when it was that the Twin Cities first gained the advantage that I have referred to on the seaboard rates, as a permanent thing, to keep them?

A. It must have been before my experience in the railroad business. It has been in effect as long as I can remember.

Q. Look that up.

A. Yes, I will. That was just one year before I came up in-

to this country. It probably was true.

Q. You were not at St. Paul with the Great Western?

A. Yes, I was, but I was also in Iowa and other points in Minnesota before I came here.

Q. Now, these rates fixed in this Commissioners' schedule are based wholly upon weight and distance, are they not, together with the classification? In each class it is based wholly on weight and distance, isn't it?

A. I don't believe I quite understand the question.

Q. Well, it is absolutely rigid, isn't it?

A. Yes, it is a rigid rate; that is true.

Q. And if you know the rule, that is, the relation of classes to each other, and one figure anywhere in the whole schedule, you can construct the schedule—one rate and distance?

A. Yes, if you had the first class rate for the first distance, you could go on.

Q. Or, if you had the first class rate for the last distance, if you knew the rule, you could do it?

A. Only that you would have to work backwards instead of forwards.

Q. That is, any rate for any distance enables you to construct the whole table?

A. I presume it would, yes.

Q. And it applies in all directions?

A. It should do so.

Q. Well, it does, doesn't it?

A. It does until the railway people apply the rate at some short line point.

Q. Well, I know, but as far as the schedule is concerned, as far as the maximum schedule is concerned, that is true, isn't it?

A. Yes, that is true.

Q. Of course it can be modified by the railroads competing below the maximum?

A. Yes sir.

Q. It is not a rigid schedule in that you must charge the maximum?

A. No, it is not necessarily so.

Q. Now, you gave us some nine elements entering into the problem of rate-making, one of them was competition, wasn't it?

A. Yes sir.

Q. That has been ignored in making this schedule, has it not, because it is alike on all roads, whether weak or strong, whether the tonnage is light or heavy?

A. It has been modified, also, as regards to some of the weaker lines, that could not afford to carry business under that schedule. Take some of the smaller roads that made application, they have been exempted from the application of that rate.

Q. What roads?

A. Well, take some of the logging lines, for instance. The Duluth, Rainy Lake & Winnipeg was one, and the Minneapolis & Rainy River, I believe, was another; and some other of the lines that could be called very weak lines and did very little business, they were exempted from it. The only ones that applied and made a showing upon it were all exempted.

Q. But that schedule was published and framed and the orders were all made alike as to all companies, were they not? a separate order was made to each company?

A. Yes, sir.

Q. Serving the schedule on them and telling them to obey it?

A. Yes, sir, correct.

Q. And that without regard to tonnage, conditions, cost, or anything else?

A. I don't think that is so. I think that that was all considered by the Commission when they had taken all the evidence.

Q. That is, they found that the same rates were reasonable on the Northern Pacific, whose earnings were more than twice as much as they were on the Minneapolis & St. Louis, didn't they?

A. They did until such time as some of the roads came in and made a showing that they were not reasonable; then they modified their order.

Q. They didn't as to the Minneapolis & St. Louis, did they?

A. The St. Louis never asked for any modification.

Q. So you are familiar with the nine roads here in court?

A. Fairly so, Mr. Butler.

Q. The Rock Island you know to be a very weak road, as far as earnings in Minnesota is concerned, don't you?

A. Well, I wouldn't say they were a weak road.

Q. How much do they earn a mile of track in Minnesota per annum?

A. I can tell you, I believe.

Q. I mean gross,—interstate, local and all.

A. You mean the entire line, that is the idea, is it?

Q. No, in Minnesota.

A. $2,647.66.

Q. That includes the earnings on local business in Minnesota and Minnesota's proportion of the interstate earnings on that line in this state, does it?

A. I presume it does. It seems to be an understood thing that they have figured all their earnings that way. I didn't understand it that way, but I think I am mistaken in that.

Q. That is the way it purports to be in the published report of the Commission taken from the railway company's report to it, isn't it?

A. It states that as "Traffic and Mileage Statistics, State of Minnesota." I presume that is what it means.

Q. Now, the same as to the Minneapolis & St. Louis, if you can hand it to us.

A. $4,401.80.

Q. What year was that?

A. 1907.

Q. And the Northern Pacific.

A. $10,775.83.

Q. And the Mesabe & Northern.

A. $44,586.07.

Q. And the Duluth & Iron Range.

A. $37,052.12.

Q. And the same schedule was determined to be reasonable for all of the roads that you have given the earnings of, by a separate order of the Commission and served upon them?

A. It was, until it was modified, as I say.

Q. Well, it was not modified as to any of the roads that you have spoken of?

A. No, sir; because none of them asked for any modification of it.

Q. Well, was that the reason it was not modified—Do you promise, if they do ask, to have it put back?

A. No, sir; that is not the idea at all.

Q. Did the roads which we have mentioned appear before the Commission and object to putting the order in?

A. Not that I ever knew of.

Q. Wasn't there a hearing up there?

A. Oh, there were hearings before the order was put in, but not afterwards, I don't think.

Q. The schedule was made before or after the hearing?

A. The schedule was made after all the hearings.

Q. It wasn't made before and served as a notice why it shouldn't go into effect? That is sometimes done.

A. I don't just recall that. I wouldn't answer that. I don't think it was, though.

Q. It is sometimes the practice of the Commission, is it not, when it has before it the consideration of rates generally or

rates, to make out a schedule of what seems to the Commission right and then serve an order to show cause on the railroads why that schedule should not be put into effect?

A. Well, I couldn't say whether that was done in this case or not. I don't recall it.

Q. But you do recall that the railroads came up there and clamored to be left alone, don't you, that the rates that were in were not too high? You do remember that, don't you?

A. I do remember that, yes.

Q. And you do remember that the Northern Pacific and Minneapolis & St. Louis and Rock Island were among them, don't you?

A. Yes, they were all represented there. That is equally true, though, of some trifling thing that they will afterwards agree to do.

Q. Well, you are not intending to give us the impression that if we come up and ask, in behalf of the Rock Island, or the St. Louis, that you withdraw this order, that it will be done?

A. Not on my part. That is for the Commissioners to pass on.

Q. Now, the very fact that this schedule is made applicable to all the roads, (the same schedule) indicates, does it not, that, in making the schedule, competition was not considered?

A. Well, Mr. Butler, the elements that entered into the consideration of the making of that rate with the Commission are something that I didn't have anything to do with. As I say, my part of it was—

Q. In your direct examination, you enumerated the nine certain elements which went to make up the rate; you didn't mean to tell us that those nine elements were taken into account in making up these rates, did you?

A. No, sir, that was just merely giving what the Interstate Commerce state are the elements of rate-making.

Q. You didn't intend to tell us that the volume of business

of any of these particular classes, or classes of commodities on each of the roads, was taken into account by this Commission? When you enumerated these nine elements, you didn't intend to have the Court and Master understand that they took into account the volume of business?

A. They did do that just the same.

Q. That they did?

A. They did do that. I didn't intend, when I gave this reference to those elements, that they entered into it. It is a fact that they did do that.

Q. Have you ever come at it so you could tell the volume of the intrastate business on any of these roads?

A. Do you mean on any given commodity?

Q. On the classes.

A. On the classes, yes.

Q. What was the volume of earnings, or tons, (either one) on the Rock Island, intrastate strictly?

A. I will give it to you for one year.

Q. Any year you please. I would rather have the tons or ton miles,—ton miles.

A. For 1907 the total merchandise tonnage on the Rock Island was 69,987 tons for Minnesota.

Q. Have you the ton miles there?

A. No, not the ton miles.

Q. Or the average haul?

A. No, I haven't got that, either.

Q. Can you give us the sum?

A. Average haul, yes, I can give you that.

Q. The local average haul? or is that within Minnesota average haul? I don't think you have the local average haul there, have you?

A. Average distance hauled of one ton, is that what you want?

Q. Yes; that is within the state of Minnesota, is it?

A. Yes, sir.

Q. That includes the Minnesota proportion of the interstate, doesn't it?

A. Yes, I presume that is what it does.

Q. The tonnage you have given me includes only the intrastate tonnage; isn't that so?

A. It includes the entire tonnage in Minnesota.

Q. Oh, the entire tonnage?

A. That is the entire merchandise tonnage in Minnesota.

Q. I mean the intrastate merchandise. You were not fixing rates on the interstate business?

A. No, that is just what I say. This is the intrastate tonnage.

Q. I misunderstood you. I thought you said the entire tonnage. Now, the local tonnage is what I am trying to get at.

A. Well, that is the figure that I gave you.

Q. Now, on the Northern Pacific.

A. It is just merchandise you are asking for, is it?

Q. Yes, class-rate stuff.

A. That is information that the Northern Pacific have never given to us. They don't keep a tonnage statement in their accounts. Now, that is just a matter of accounting with the roads. There are some of them keep what they call a commodity statement, that shows the movement of freight by commodities; and others, again, just keep that in part. Now, the Northern Pacific just keep that in part and don't segregate the merchandise from the other articles.

Q. Well, you understand, do you not, that the business reported by the railway companies to the commission as intrastate business has been excessive and erroneous by reason of including certain interline shipments?

A. I didn't understand that, Mr. Butler, no.

Q. Didn't you recently, since this matter came up, know it was being worked out and corrected by this Northern Pacific

Company and by Mr. Hillman? I understood, for your Commission.

A. I haven't interfered in any way; I haven't been mixed up with that at all, and I didn't know anything about that.

Q. Now, the direction or movement of merchandise is almost all westerly, isn't it?

A. Merchandise, yes.

Q. I mean intrastate Minnesota merchandise.

A. Yes.

Q. But the rate is the same, no matter in which direction it moves?

A. Yes, that is true.

Q. That is true of everything in the commodity rates, isn't it, under Chapter 232?

A. It would be, if they were in effect.

Q. I mean the schedule.

A. Yes, sir.

Q. And it is true in all of the schedules here in controversy, excepting the schedule promulgated by the order of May 3rd, isn't it? that is, of the distributing points?

A. Oh, yes, that is true, excepting as far as regards that schedule.

Q. That is Exhibit 2 in this bill of complaint?

A. Yes, sir.

Q. Now, in Exhibit 2 in this Complainant's bill, the Commission have made eleven different commodity rates in carload combinations, have they not?

A. I think I will have to amend that by saying that the railway companies made that.

Q. Well, by that order they have made it, haven't they?

A. Well, the articles enumerated in that order, I should say, were taken from the railway companies' tariffs themselves.

Q. But the rates were made by the Commission?

A. The rates were made by the Commission, yes, sir.

Q. So those commodity rates to which you referred as being the source of the inequality of rates, in your direct examination, were, as a matter of fact, as respects eleven different carload classes, recognized by the Commission, rates fixed by the Commission lower than they would take under the order of September 6, 1906, were they not?

A. Yes.

Q. So that the particular inequalities resulting from the commodity rates which the railroads had put in, to what you call, in this order, the distributing points of East Grand Forks, Fergus Falls, Breckenridge, Sauk Center, Crookston, Detroit, St. Cloud and Moorhead were recognized and confirmed by the Commission itself, and the inequality between the class rates and the commodity rates, as respects these commodities, was maintained by order of the Commission; isn't that true?

A. The rates that were ordered in by the Commission to these distributing centers was merely putting those distributing centers on the same basis that they had been before the order of the Commission, as far as regards the carload commodities going in there.

Q. These rates were lower, were they not, than they would have been under the class rates?

A. Lower than they would have been under the Commissioners' schedule, yes, sir.

Q. And in making the Commissioners' schedule of September 6, 1906, the railroad companies were given permission, were they not, either formally or informally, to reduce to these points, on the commodities named, and maintain the difference that theretofore existed by reason of these commodity rates, and, the railroad companies having only to avail themselves of the privilege to reduce to these points, the Commission, on May 3, 1907, made the order that they should do it; that is what happened, isn't it?

A. Yes, sir; that is the actual fact.

Q. So that, as far as those particular inequalities are concerned, you think they are inequalities that are right, don't you?

A. I think they are.

Q. And that ought not to be destroyed by any order or schedule of rates?

A. Yes.

Q. Now, you stated, in your direct examination, that it was the purpose of the Commission to make a schedule to get rid of the inequalities, as I gathered it, that existed before in the rates?

A. That was one of the objects, yes.

Q. As I gathered from you, the merchandise rates, as a whole, were higher on the northern lines than on the southern lines, in Minnesota.

A. That is true.

Q. And the converse of that true as to commodities.

A. Yes.

Q. The commodity rates were lower in the north than in the south part of the state?

A. With the exception of livestock.

Q. Now, those commodities where the general range of intrastate rates was lower, in the north, were the commodities of great intrastate tonnage, were they not?

A. Yes, they were grain and lumber.

Q. The grain and lumber on the southern roads (I mean the intrastate grain and lumber on the southern roads) is, by comparison with the same on the northern roads, very light indeed, is it not?

A. Into the Twin Cities it is, yes.

Q. I mean the intrastate business.

A. Oh, yes, that is true, Mr. Butler.

Q. And the merchandise rates in the south were largely dominated by competition from Chicago and Milwaukee, were

they not, competition of the jobbers there?

A. That I am not prepared to say; I don't know that.

Q. Do you happen to know whether or not those two points, Milwaukee and Chicago, and the roads going there from points in Minnesota, are strong competitors for grain and its products from southern Minnesota with Minneapolis and Duluth?

A. I am quite sure they are, for the reason that I stated in my testimony, that they get the long haul and naturally would want to have the business go that way.

Q. And it has been a matter, has it not, of litigation, during your time, before the Interstate Commerce Commission, to maintain a right relation of rates from southern Minnesota to Milwaukee, as compared with the rates from the same territory to the Twin Cities and Duluth?

A. I don't recall that.

Q. Don't you recall complaints by the board of trade of Milwaukee before the Interstate Commerce Commission? Do you remember that man's name down there that followed it for years?

A. I don't recall that, Mr. Butler; I haven't seen that.

Q. Well, don't you know, as a matter of fact, that if the rates from southern Minnesota on grain or the products of grain to the Twin Cities or Duluth be reduced, that Milwaukee and Chicago and the roads with long lines running to those places, will instantly say that the interstate rates must be made to correspond, to the end that these points, primary markets outside of Minnesota, shall not be discriminated against? Don't you know that to be the fact, as a matter of principle?

A. Why, they might say that, Mr. Butler, but I don't think that is borne out by the rates that we have here.

Q. You don't think that they have kept in equality—I don't mean in equality, but in parity, in the same relation.

A. They are not on an equality. They may be, in an indirect way, on a parity. That would be a better way to put it.

Q. Now, for many years there has been, between the Twin Cities and Chicago, a very low rate on grain and its products, has there not?

A. Yes.

Q. And between the Twin Cities and Duluth?

A. Yes.

Q. And that has been rigid and the same, has it not, practically for years?

A. It has stood at the same figure for quite a long time.

Q. The Great Western, when it first came upon the horizon, more than a score of years ago, made that rate 7½, didn't it, between Twin Cities and Chicago, and all of the other roads have followed it, some of them being hurt pretty badly by it?

A. That may be true, but it is only within the last few years, Mr. Butler, that that rate has been published; they carried a rate of that kind and lower rates than that, but in another way.

Q. But the shippers paid 7½ for moving the stuff, and the railroads got 7½ for moving it, no matter what they published; that is the fact, isn't it, or do you know about that?

A. Well, I know, yes. When I say I know, I know because I handled what is known as special claims for railroads for a while.

Q. You know that is the rate, don't you?

A. I know 7½, and, sometimes, as low as 6, was the rate.

Q. Don't you know that a disturbance of the rate to St. Paul and Minneapolis from Minnesota points on grain will very seriously affect the interests of the carriers to Milwaukee and the carriers to Chicago and the mills and grain men at both points; isn't that true?

A. Well, that is what is claimed to be true, Mr. Butler, but that is one of the things, although I have read on that subject and tried to study it up, I never could really understand why they claimed they would be hurt.

Q. Then you don't care to express an opinion upon that, one way or the other?

A. I wouldn't express any opinion on it, no.

Q. Now, you expressed the opinion to Mr. O'Brien, in your direct examination, that it was not necessary to make the interstate rates to Dakota, correspond, or to reduce them by reason of these local rates. Did I understand you right about that?

A. What I intended to convey was that I didn't think it was necessary for the railway companies to make reductions as far west as they did.

Q. Yes, I think I didn't in my last question quote you exactly right. I find I noted it down as you went along, and the substance of what I noted is this, "I don't think that there is any good reason for extending the effect of the rates to North Dakota."

A. That was intended to express the idea that I didn't see the necessity of them extending them as far into North Dakota as they did.

Q. But you do recognize the necessity of the Northern Pacific Road and the other northern lines of extending them to some extent into North Dakota, and that extent you think could be limited to the distance indicated by your exhibit marked 3-B?

A. I think that is true, if they concede the reasonableness of the rate at Moorhead, for instance.

Q. Well, assuming that it be reasonable or unreasonable at Moorhead, if it be enforced and they are obliged to obey it, then, as a matter of common fairness, you would say that they must reduce their rates in North Dakota at least to the extent that you have indicated upon Ex. 3-B; that is, that the two rates, without such modification, would be manifestly unfair and unequal under the circumstances?

A. If the rate at Minnesota points (for instance, Moorhead) was decided to be a fair and a just rate, it would be

evident that the rate across the line, if it was 10 cents higher, would be an unfair and unjust rate.

Q. So, if the Moorhead rate were enforced, whether it be high enough or not, you are of opinion, in order to avoid the grossest inequality, that they would have to reduce into Dakota at least to the extent you have indicated on Ex. 3-B?

A. No, I didn't say in Ex. 3-B that they would have to reduce. I said they could have wiped out that inequality there. I think that the previous practice of the roads, in making the same rate on both sides of the river, might have compelled them to still maintain that same rate there; but if the line south of the cities didn't consider it necessary to change their rates on each side of the line, would, I think, have cleared the Northern Pacific, or any other road, from carrying that reduction any further.

Q. You think the situation is the same as respects the movement of merchandise and commodities from Iowa, for example, to the Twin Cities and Duluth, as it is from North Dakota to the Twin Cities and Duluth, do you?

A. I think the reverse way would be true, yes, Mr. Butler.

Q. You think the situation is the same?

A. I think it is, to a great extent.

Q. And that is true as to the movement of commodities?

A. Why, I should say so, yes.

Q. Now, let us take the grain-raiser, call it of flax or barley, in the Red river valley, in Dakota, or in the Missouri valley in North Dakota, where is his primary market?

A. I think Minneapolis or Duluth.

Q. Take the man at Pipestone, in Minnesota, where are his?

A. I think that his primary markets could be divided between Chicago and Minneapolis and Duluth.

Q. And Milwaukee?

A. And Milwaukee; yes, that is true.

Q. The Chicago, Milwaukee & St. Paul road runs right over

to Milwaukee from there, doesn't it?

A. I believe they do, yes.

Q. Almost straight?

A. Yes, sir; I think that is perfectly true.

Q. The Great Northern goes into Pipestone, does it not?

A. Yes, sir.

Q. The Rock Island goes into Pipestone?

A. Yes, sir.

Q. The Omaha goes into Pipestone?

A. Yes, sir.

Q. And the Milwaukee?

A. Yes, sir.

Q. Now, just the moment there is any disturbance at Pipestone of the interstate rate lowering the interstate rate to Milwaukee a cent a bushel or a cent a hundred pounds, the grain will flow to Milwaukee, won't it?

A. I should think so.

Q. And it would be necessary for this state, in order to protect Duluth and the Twin Cities, to lower to meet it, wouldn't it?

A. I don't think it would, because it has not been done, Mr. Butler.

Q. Where does the grain go? Does it all go to one point, or has there been such a parity that each market gets its share, Chicago some, Milwaukee some, Duluth some and the Twin Cities some?

A. I think each market got its share.

Q. So there has been a parity of rate-relation there that has given to the grain dealer and the millers and exporters at these primary markets each a share of the trade, hasn't there?

A. Why, yes, that is true, I presume, but it hasn't always been maintained, as far as this state is concerned.

Q. The equality hasn't you mean, or parity,—which?

A. The parity between the rates.

Q. Do you remember, during the administration of Gov. Lind, when the rates in southern Minnesota, on grain and the products, to Minneapolis and Duluth were reduced by the Commission, or a compromise with the railroad companies?

A. I have read of it, Mr. Butler.

Q. Do you know that at that time all the rates to Chicago and Milwaukee went down, the same, to maintain the parity of relation? Did you know that?

A. I was a local agent then. I know there was a reduction in grain rates, but I didn't know what brought it about.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. I received the impression, from something you said in direct examination, that it was your idea that the railroad companies having the longer line ought not to meet the short-line rates between certain competitive points, and that it would be better for them if they would stick to the distance tariff and avoid the blanketing; did I get the right impression?

A. Yes, I think, in a general way, that is about what I said.

Q. Now, let us speak of Pipestone on grain into the Twin Cities or Minneapolis. The Great Northern is the short line?

A. I rather think the Omaha is.

Q. I think it is the Great Northern. The figures are right there on the map.

A. Yes, that is correct.

Q. The Great Northern is the short line; the Omaha is a little longer, the Milwaukee is longer than the Omaha, and the Rock Island is the longest of the four?

A. That is correct.

Q. That is the situation, isn't it?

A. Yes, sir.

Q. Now, if the longer lines did not meet the Great Northern short-line rate, the Great Northern would have all the grain

business to Minneapolis, wouldn't it, from that point?

A. Yes, it would, undoubtedly.

Q. And the others would have to go out of the business there of hauling grain to Minneapolis?

A. Yes, sir.

Q. The Rock Island is a Chicago road, is it not?

A. Yes.

Q. So is the Milwaukee?

A. Yes.

Q. It goes to Chicago and Milwaukee both?

A. Yes, sir.

Q. And has short-line routes from Pipestone to both, or pretty direct routes, to both Chicago and Milwaukee?

A. Yes, sir.

Q. The Northwestern (with which the Omaha is intimately connected, a part of the system), also would find ready facilities and a direct route, by its own line and the Northwestern line, to go to Chicago?

A. Yes.

Q. In which case the Northwestern would get a long haul?

A. Yes, sir.

Q. And the Milwaukee would get the whole haul, in such case, and a good deal more than twice as long as to Minneapolis?

A. Yes, almost twice the rate.

Q. Yes, of course, the rate would be corresponding, so it would be to the advantage of those carriers to divert the business to Chicago and to Milwaukee?

A. Yes, sir.

Q. Now, suppose you compare the Omaha with the Milwaukee on Pipestone grain, or stock business, in to Minneapolis. The difference in mileage is 60 miles to Minneapolis?

A. Yes.

Q. Your idea is that the Milwaukee could avoid this blanket

of sixty miles by going out of the business at Pipestone?

A. Yes.

Q. Now, you observe, do you not, that for a distance of about 60 miles, the Omaha, from Heron Lake to Pipestone, parallels the Milwaukee from Prairie Junction to Pipestone?

A. Yes, that is true.

Q. And the roads are very near together, perhaps at no point as much as eight miles apart, and most of the way less than four; that is true, isn't it?

A. Yes.

Q. Now, do you think it would be practicable, on the Milwaukee line, to maintain rates at the towns between Prairie Junction and Pipestone any substantial degree lower than the rates on the Omaha between Heron Lake and Pipestone?

A. I think if both roads charged the actual distance rate that it would make no difference to them at all.

Q. Well, the actual distance rate—Prairie Junction competes with Heron Lake, they are almost side by side, isn't that true?

A. Yes.

Q. Dundee and Kinbrae are almost side by side?

A. Yes.

Q. Kinbrae on the Milwaukee, and Dundee on the Omaha?

A. Yes.

Q. That is true?

A. Yes, sir.

Q. It is farther from Kinbrae to Minneapolis than it is from Dundee to Minneapolis, isn't it?

A. I believe it is, yes.

Q. Yes, a good deal farther?

A. I don't know how much.

Q. Well, it is about sixty miles; that is apparent from an observation of this map. Pipestone is sixty miles distant, and you can see the distance between Dundee and Pipestone is

about the same distance as between Kinbrae and Dundee?

A. Yes.

Q. So your idea would be that Kinbrae ought to take a sixty-mile higher rate than Dundee?

A. If that was the rate for the distance of the haul, I think so, yes.

Q. Don't you think that would make all the grain go over to Dundee to go in on the other line?

A. Possibly it would, yes.

Q. Between those junction points that I have spoken of, Heron Lake and Prairie Junction at the east and Pipestone at the west, there are thirteen stations, about as many on one as there are on the other line, and it would give each one of the Omaha stations sixty miles the advantage, on freight of all classes, in or out of Minneapolis, would it not, if they stuck to the mileage tariff?

A. Yes.

Q. The effect of that would be, would it not, to give the merchants and farmers and shippers at all the towns on the Omaha just that much advantage over the towns on the Milwaukee and would drive them out of business, would it not?

A. I presume it would, yes.

Q. And your idea is that that ought to be done?

A. Not necessarily that, no.

Q. Well, that is what your mileage scheme would lead to, if you would have each company, without regard to the distance to the markets or from the markets, apply the maximum rates provided for in the schedule, isn't it?

A. Why, I think, myself, that each railroad company—if the Omaha Railroad Company happen to have a shorter line, by reason of probably having spent more money to get that short line, I think they are entitled to that advantage.

Q. That is what I apprehended you believed. That is, you believe that, by reason of the fact that the Omaha line is a

shorter line to the Twin Cities and to Duluth, the towns on the Omaha line should have the benefit of sixty miles in rates, both in and out, on all kinds of freight, over the towns on the Milwaukee line?

A. I think they ought to have the benefit of their geographical location and the excellence of the railroad and service.

Q. Now, suppose the converse of that were true, to Milwaukee or Chicago; suppose it turned out that to Milwaukee (as perchance the fact is, I don't know) that the Milwaukee was the short line there and the Omaha was longer by sixty miles, I suppose your principle would still hold good that, in such case, the Milwaukee towns should have the advantage over the Omaha towns with respect to the traffic in and out of Chicago or Milwaukee?

A. Yes, I think that is true, but I also think that a scale of rates that was made to fit this state, Mr. Butler, might not apply, or might not be successfully used, all over the United States.

Q. Oh, I understand, but the same principle would apply?

A. Yes, to a large extent it would.

Q. That is, if blanketing is wrong, as applied to local freight in any state, blanketing would be wrong as applied to interstate business, would it not?

A. I don't say that it is wrong.

Q. Well, I mean unwise or inexpedient.

A. I think it causes a loss of revenue that they don't need to have, sometimes.

Q. So on the supposition that the Omaha is the short line to the Twin Cities and to Duluth, and that the St. Paul line is the short line from Pipestone and that region to Milwaukee or Chicago, it would make the towns on the Omaha tributary to the Twin Cities wholly and the towns on the other tributary wholly to Chicago and Milwaukee, would it not?

A. Well, I don't think it would, looking at it in the light

you just spoke of it a little while ago; that is, that if the people wanted to ship to Milwaukee they would take and haul over the shortest line, if they wanted to ship to Minneapolis, they are so close together they could haul over the short line to the Twin Cities.

Q. And do you think the fact that these lines are together and these towns are competing towns, the towns on one line competing with the towns on the other, is a reason why, in all fairness to everybody concerned, that the rates to all of the primary markets and from all of the primary markets involved in that situation, should be substantially the same, without regard to the actual mileage of the track or tracks; don't you think that the better way?

A. Well, I am not prepared to pass on the fairness of it at all, because I don't think that that is a question that I am competent to pass upon.

Q. I would not have gone into it had it not been that I understood you to say, in your direct examination, that the practice of blanketing was not right, or was not justified or expedient, or was a mistake or unnecessary.

A. Well, what I did say, Mr. Butler, was hardly that. It was simply that I said, as you illustrated just now, there are thirteen stations where the rate to Pipestone is blanketed right back on those stations, for instance.

Q. On one line?

A. On one line or with both lines. That is true on both lines.

Q. One is a blanket for the Twin Cities and the other a blanket for the interstate business to Chicago and Milwaukee?

A. No, I mean where the rates are blanketed on both lines to the Twin Cities leaving Milwaukee out of it altogether. Now, I don't believe there is enough business moves out of Pipestone to compensate one of the roads for blanketing that rate

back or reducing it back there sixty miles. That is what I mean.

Q. Don't you think that considerations of fairness and equality, as between these thirteen towns, about half on one road and about half on the other, are a sufficient justification for that; isn't that the very equality that you have said is so valuable to the state?

A. No, I don't think so. That was the equality of a given haul that I was speaking about.

Q. You mean equality as between stations on the same line?

A. For the same distance.

Q. But you think that considerations of equality ought not to be taken into account as between stations on different lines in the same territory, such as we have been talking about?

A. Where the haul is different I don't think it should.

Q. You think that the distance schedule should be adhered to?

A. Yes, that is what I meant to convey.

Q. Now, you know, as a matter of practice, that it is not, either in local or interstate business, adhered to, don't you?

A. I know that it is not on local business; it is, on interstate business, to a large extent.

Q. The distance is adhered to?

A. That is, not exactly the distance rate, but the rate that is in effect.

Q. Take the Twin Cities and Duluth, the distance on the Omaha road is about 35 or 40 miles longer than the shorter line, isn't it?

A. About 35 miles, I think.

Q. The rates are, and always have been, the same?

A. Yes, that is true between the cities.

Q. Both the interstate rates and the local rates?

A. I couldn't say as to the local rates; I know the rate between here and Duluth is the same over all the three lines.

Q. Both freight and passenger, and it has always been so?

A. Yes, that is true.

Q. And before the Northern Pacific became the proprietor of the old St. Paul & Duluth, which I think is the short line between Duluth and the Twin Cities, it used to compete for some of the business by hauling all the way around by Brainerd, didn't it?

A. Yes.

Q. At the same rates?

A. I couldn't say as to that, that was before I had any knowledge of that road.

Q. Before the Great Northern Company made what is called the Coon Creek cut-off, from Coon Creek to Brook Park, making it also a short line, when its line went around by Elk River and up by Milaca and in on the Eastern Minnesota, its mileage was thirty, or forty or fifty miles more than the St. Paul & Duluth, wasn't it?

A. Yes.

Q. And its rates were always the same, were they not?

A. To Duluth, but not to intermediate points.

Q. But were to Duluth?

A. Yes, sir.

Q. It was necessarily so, wasn't it, if it wanted any business?

A. Yes, I presume that is true.

Q. Well, now, don't you think that justified?

A. Well, I don't know whether I have said it here or not, but I have said several times, (I think I did here) that the rates between St. Paul and Duluth can hardly be used as a measure for the rates in any other part of the state.

Q. Well, take for example grain in the Red river country, originating on the Soo, going via the Soo to the Northern Pacific junction down here some place, (what is that junction they use?) Glenwood, and then by the Northern Pacific into Duluth, its mileage to Duluth is vastly greater, is it not, than the Great

Northern mileage from Fosston over?

A. Yes, a great deal longer.

Q. And grain rates and stock rates and coal rates and lumber rates are all the same, are they not, on the Soo?

A. The only rates they have into Duluth from there I think are the grain rates.

Q. Well, they are the same?

A. I wouldn't say as to that; I believe they are, though.

Q. If they were not, the grain would not move by the Soo, would it?

A. No, sir.

Q. It would all go by the Great Northern, isn't that true?

A. Excepting as to that part of the grain that is right on the line of the Soo.

Q. Well, now, don't you think that justified, from the standpoint of the Railroad Company, that it ought to participate in the business of that territory up there in that fertile valley of the Red river, even if they have to haul a little farther or a good deal farther than the short line?

A. I think if they have some disability as far as their line is concerned, that is a misfortune, but I don't think they ought to expect to get a haul on business coming into competition with the Northern Pacific that has a good straight-away haul, all over their own rails.

Q. You think it would be for their interest to forego such business?

A. As far as they could, yes.

Q. Does not the question whether or not it is wise for a railroad company to forego entering into competition for business where its line is a little longer haul depends entirely upon the circumstances, the volume of the traffic and all of the elements which affect the cost of doing the business? Isn't it merely a financial problem, for the traffic department of the railroad involved, to tell which will make more money—

A. I think it is a question that is decided by the traffic departments in all cases.

Q. Well, oughtn't it to be?

A. Well, I presume so, yes.

Q. And it would not be safe, would it, for any one to express an opinion they ought or ought not to do it in a given case unless all of the circumstances touching the movement of the traffic and the cost of doing the business were taken into account, in some degree, at least?

A. I think that is true, yes.

Q. So you would not want it understood, then, that there is any general rule that they should not compete with the short line for the business and should not blanket to get—They blanket in order to avoid violating the law, don't they?

A. Why, no, I wouldn't want it understood that there should be a general rule forbidding them to do that.

Q. Now, this same situation presents itself with reference to the longer line meeting the rates made by the shorter line, in interstate business as in local business, does it not?

A. I don't believe I quite understand that.

Q. Well, I say in interstate commerce, the necessity of the long line meeting the shorter line's rate, exists just the same as it does in local business?

A. They do that anyway, they meet the short line.

Q. And the same reasons for doing it as in the local business?

A. I think that is true, yes.

Q. Now, as a matter of fact, the Rock Island's haul from Pipestone to Minneapolis, is interstate haul, isn't it?

A. Yes, sir.

Q. That is because it goes out of the state and comes back into the state between Pipestone and Minneapolis?

A. Yes, that is true.

Q. Do you know, as a matter of fact, whether it engages

in any business between Pipestone and Minneapolis, of any kind, in or out?

A. I couldn't say as to that, Mr. Butler, I have not examined the Rock Island's way-bills.

Q. You don't know whether they participate in the wheat business to Minneapolis or not?

A. I couldn't say as to that, no.

Q. Well, if they want to, you say that they must, as a matter of fact, meet the Great Northern rate, to get any of the business, don't you?

A. If they expected to haul any of the freight they would have to do that, yes.

Q. Well, that is what I mean, from the Twin Cities to Pipestone; so that is a case where the reduction of the state local rate between the Twin Cities and Pipestone on the Great Northern road compels the Rock Island to reduce its interstate rate between the same points or to go out of the business between those points?

A. Yes, as far as regards those two points.

Q. And that is also true with respect to all of the Rock Island points between Pipestone and the Iowa line where its railroad crosses the Iowa line?

A. You mean by that, Mr. Butler, that they would have to blanket the rate back from Pipestone in order to participate in the business there?

Q. Yes.

A. If they published that rate at Pipestone to meet the Great Northern rate at Pipestone, the law in this state would compel them to blanket it back, because its haul would make a greater rate.

Q. That is what I say. So that it would not only make it reduce its interstate rates to Pipestone or go out of the business, but it would also affect other stations within the blanket to which you have referred, in like manner?

A. Within this state?

Q. Yes, within this state, that is what I mean. That is true, isn't it?

A. I believe that to be true, yes.

Q. That is the situation that is true between the Northern Pacific and the Great Northern at the Head of the Lakes and the Twin Cities, one road being a local road and the other an interstate road, the interstate rates have to go down or that road go out of business; isn't that true?

A. It is true as far as the stations in the state of Minnesota are concerned, but I don't believe it is true as far as the stations in Wisconsin on the Great Northern railroad are concerned.

Q. Well, let us see about that. The haul from Duluth to the Twin Cities on the Northern Pacific is local to the state?

A. Yes.

Q. And on the Great Northern it is interstate?

A. Yes.

Q. Now, the Great Northern cannot maintain any higher rate between Duluth and the Twin Cities than the Northern Pacific can, can it?

A. Not between the two cities themselves.

Q. That is what I mean.

A. No, sir.

Q. So if it wants any Twin City-Duluth business it has to meet the local rate, has to reduce the interstate rate to do it or go out of the business?

A. Yes, sir, that is right.

Q. That is true of the Omaha, isn't it?

A. Yes, that is as regards the two cities, the two terminals.

Q. That is also true of the Wisconsin Central,—which is now at the Head of the Lakes?

A. I don't even know what their rate is, I have never considered the Wisconsin Central as being in that territory.

Q. You said something, in your direct examination, with respect to the lake coal that reaches southern Minnesota. You say there is very little via Twin Cities from the Head of the Lakes?

A. So far as I have looked through the way-bills, of the Minneapolis & St. Louis, for instance, there seems very little of that business.

Q. The M. & St. L. does not touch the Head of the Lakes?

A No, sir, but they have joint rates in with the lines that do.

Q. To Duluth?

A. Yes, sir, Superior.

Q. What roads?

A. The Northern Pacific, to and from Duluth and Superior.

Q. It is true, is it not, that this lake coal may come from Duluth, Superior, Ashland, Gladstone, Manitowoc, Green Bay, Milwaukee, Sheboygan or Chicago, the same eastern coal?

A. I think that is true, Mr. Butler.

Q. And the lake Michigan ports get that coal, lake-and-rail to their ports, on a parity with Duluth, do they not?

A That I couldn't say.

Q. You don't know what the lake-and-rail rate is to those points?

A. Not to the lake Michigan ports.

Q. And all the lake Michigan ports, especially the lower ones, from Manitowoc south, have lines, have they not, running right straight through Wisconsin, into and across southern Minnesota?

A. I think all of the lines have, except the M. & St. L.

Q. Well, I know, but these like Michigan ports have a continuous-line haul into Minnesota?

A Yes, that is true.

Q. And that coal meets, in southern Minnesota, the Minnesota coal that comes to Duluth, does it not, in competition?

A. Yes, it would do it if there was some shipped down there.

Q. And it is the same kind of coal, isn't it?

A. I presume so, from the same district.

Q. And any disturbance of the rates anywhere from the coal-mine to the Twin Cities which gives one port an advantage over the other, will have a tendency to move all the coal from the port having the advantage and will move coal to the capacity of that port and the carriers from it, won't it, to the detriment of the port discriminated against?

A. Well, that is a question, Mr. Butler, that is a little too broad for me to answer. I couldn't say as to that, for the reason that I don't know what the rate is from the producing mines in Pennsylvania, say, in the Hocking valley, to the lower ports, the lower lake Michigan ports.

Q. I was not intending to ask for the absolute rate or to find out how the total rate to the Twin Cities or Minnesota Transfer was built up; but I ask you to assume an inequality in favor of a Duluth port, if you please, so that the Pennsylvania coal and the Virginia coal could come to Minnesota Transfer *via* Duluth and a local haul in Minnesota cheaper than the rates in effect *via* Superior and an interstate haul to the Transfer, or *via* Ashland and an interstate haul, or *via* Gladstone or Manitowoc or Green Bay or Sheboygan or any of those points. If it was cheaper to get the coal from the Duluth port, it would all come that way, at least to the capacity of that port, would it not, no matter what the rate is?

A. If it was cheaper, I presume it would.

Q. Then does it not follow from that statement, as a matter of fact, that if the State of Minnesota by fixing the rate between Minnesota Transfer and Duluth makes it cheaper, they thereby drive the other ports, and the carriers from the other ports, out of business unless they meet the rate?

A. It would be true if the schedule of rates made any re-

duction in the coal rates from Duluth to Minnesota Transfer.

Q. Yes, sir, that would be true; so that, I believe, in this particular case, that is not done?

A. No, sir, there is no change made there.

Q. But if the Commission did change it substantially, or if the carrier voluntarily did it, the result would be, would it not, to compel the interstate carriers from the competing ports on Superior and Michigan to meet the cut or go out of business?

A. I think that would be true, yes, if that was done.

Q. Yes, that would be true. So that if, by continuous mileage, regarding the Milwaukee as a Duluth road for the purpose of my assumption, the local rate on coal from Duluth to southern Minnesota territory,—paralleling the Minneapolis & St. Louis and the Northwestern, along the line of the Southern Minnesota branch of the Milwaukee road—it would compel the Northwestern, that is competing with it and parallel to it, to either meet that rate *via* the Omaha line from Duluth, which is interstate, or by its own continuous line from Milwaukee, Green Bay or Manitowoc, would it not?

A. I should imagine so, yes.

Q. That follows of necessity?

A. I think that is true.

Q. So far we have confined this discussion to lake coal, but now, as a matter of fact, as I gained it from your direct examination, the mines in Illinois, with the different kinds of coal, send their coal by continuous lines and by the lines of connecting carriers into southern Minnesota, at a rate of $1.40?

A. That is true, I think, for the greater part of that part of the state.

Q. Some of that is hauled by continuous line, like the Rock Island?

A. The Milwaukee and the Northwestern.

Q. The Illinois Central, as far as the Illinois Central comes into Minnesota?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir.

Q. And that coal is handled at such rates and such prices, as a matter of fact, and has been for years, that it meets in competition the lake coal from the eastern country, isn't that true?

A. I don't believe there is any Hocking valley coal goes into that district; I don't think there is.

Q. Not from Manitowoc?

A. I don't hardly believe it.

Q. I don't know about Hocking valley, but there is a great deal of the eastern coal that comes *via* Michigan ports. Do you remember the tables in the St. Louis case showing what was handled in there by the Minneapolis & St. Louis, itself, connecting with the Wisconsin Central, which comes from Manitowoc to Minnesota Transfer?

A. I didn't see that table of tonnage.

Q. I think there is a table here.

A. It is possible there may be coal come up there, but I spoke only of the Duluth end of it.

Q. Now there are different kinds of coal, and moving in at different rates; a change in the price of the coal, or in the rate of the transportation, would have a tendency to drive the other out, wouldn't it?

A. I should think that was very likely if the change was a reduction.

Q. And the carrier that reaches the Illinois mines, in order to stay in the business, must keep its coal rates so that it can sell the coal in that territory as against all coal and all manner of fuel that will compete with it, isn't that true?

A. Yes, as a general thing, I should say that would be true.

Q. So that a sufficient reduction in the rate from Duluth to St. Paul and southern points, would compel the Minneapolis & St. Louis Road and its connection the Iowa Central, to meet the changed situation or go out of the business, wouldn't it?

A. I don't believe that I look at that in the same way that other people do, Mr. Butler.

Q. Well, does that appeal to you as probably true or likely to be true, if the disturbance is sufficient? That was all I wanted from you.

A. Well, if you will let me explain something as to why I said what I did about it, that didn't appeal to me just in the way that it did to other people,—

Q. Yes, answer it any way you like.

A. —I will tell you why I say that. The legislative rates do not go to work and prescribe a rate from the Head of the Lakes to a point say, on the M. & St. L., they just lay down a rate for a given haul in the state; they do not say that that shall be a joint rate. That legislative act does not say that.

Q. Well, just assume that they did, then you agree with me, don't you?

A. I agree with you if you say that that was intended as an established joint rate.

Q. Just let us assume that they did, by the Milwaukee road, down here to Chaska, where the Milwaukee and the Minneapolis & St. Louis meet each other; just assume they knocked down that coal rate from the Head of the Lakes to Chaska, where it is a junction point; now, when they do that, the Minneapolis & St. Louis has to knock down its rate from its coal-mines in Iowa or go out of the business, hasn't it?

A. I should imagine so, yes.

Q. As I figure it, the commodity rate on livestock between St. Paul and Grand Forks and East Grand Forks is always the same, is the same now, and that the proposed change would reduce the rate 4.6 cents per hundred pounds or $6.90 on a

minimum car of 15,000 pounds in weight; have I got that right? That is the minimum on livestock, isn't it?

A. That would be the minimum, as a short car of hogs.

Q. As a matter of practice, the tonnage in a livestock car is at least double that, is it not?

A. No, I think the actual weight on a car of hogs would run somewhere about 16,000 pounds on a 36-foot car.

Q. And is it a 36-foot car that is usually used?

A. Almost exclusively now.

Q. So that would be six or seven dollars difference, then, on the average car?

A. 4.4 cents.

Q. It would make a difference of about seven dollars on a 16,000 pound car?

A. Just about.

Q. Now take hard coal from Duluth to Wahpeton or to Breckenridge, the rate is proposed to be knocked down 49 cents, is it not, per ton?

A. 42 cents a ton reduction.

Q. 42 cents a ton, and that would be about $10.50 on 25 tons in a car, would it not?

A. Yes.

Q. And on soft coal, Duluth to Breckenridge and Wahpeton, the rate is knocked down 69 cents a ton by the act, isn't it?

A. It would be 76 cents.

Q. And that would be $19 per car, wouldn't it?

A. Twenty-five tons?

Q. Yes.

A. Just about that.

Q. You think that would be discrimination on soft coal between Wahpeton and Breckenridge, don't you, unjust, unfair, unreasonable, wicked?

A. I don't believe I quite follow that.

Mr. O'BRIEN: Devilish!

Mr. BUTLER: Unconstitutional!

Q. Don't you think that a railroad company that would maintain a difference of $19 per car on coal between Duluth and Breckenridge and Duluth and Wahpeton would be guilty of wicked and wrongful and criminal and unlawful discrimination? (No answer.)

Q. Now, if the Railroad was doing it itself?

A. Well, I think, as I said before, that ought to be measured by the reasonableness of the rate in Minnesota to the Minnesota point.

Q. Suppose the Railroad Company had made both rates and was maintaining them, wouldn't you think that unfair discrimination?

A. I might *think* so, but, Mr. Butler, as I say,—

Q. Wouldn't you know it?

A. No, I wouldn't know it, because I wouldn't know as to the reasonableness of either one of the rates. That is what I mean, the fairness of either one of them.

Q. Well, you would know that one town or the other was being discriminated in favor of or against, wouldn't you?

A. Yes, sir.

Q. You would know, as between the towns, it would be unfair, but which one was getting the worst of it or the best of it, you don't want to express an opinion until you know which rate is right?

A. That is exactly the idea.

Q. But as between the towns, you would say that the parties doing that were guilty of unfair discrimination?

A. I should say so in some way.

Q. Yes, sir, without any doubt. Now let us take hard coal between Duluth and Grand Forks and Duluth and East Grand Forks. The proposed reduction is 14 cents, is it?

A. 11 cents.

Q. That would be about $2.75 per car of twenty-five tons?

A. Somewhere about that.

Q. Would you say that one or the other of those rates must necessarily be unfair and unequal?

A. You mean comparing the Grand Forks rate with the Breckenridge rate?

Q. East Grand Forks.

A. East Grand Forks with the Breckenridge rate?

Q. No, Grand Forks and East Grand Forks compared.

A. Well, that would simply resolve itself, in my mind, into the same question that you brought up with reference to Breckenridge and Wahpeton.

Q. You would say one or the other of the rates was wrong?

A. Yes, that there was something wrong with that in some way, but I would not presume to say which was the fairest rate.

Q. But that there was discrimination there, you wouldn't have any doubt, would you?

A. In some way I am sure there would be.

Q. But whether it ought to be fixed by raising the East Grand Forks rate or lowering the Grand Forks rate, you don't express yourself?

A. I don't feel competent to pass an opinion on it at all.

Q. Now, take soft coal, same points, Duluth to Grand Forks and Duluth to East Grand Forks; the rate is knocked down there 43 cents per ton, isn't it?

A. 41 cents.

Q. That would be $10.25 per car on a twenty-five ton car?

A. Yes.

Q. Another case of unjust discrimination as between these rates, isn't it, in your opinion?

A. I don't think so, because I think that there should be a difference between the soft and the hard-coal rates.

Q. No, no, but these are both soft-coal rates.

A. Oh, as between the two on soft-coal rates?

Q. Yes, it knocks down the rate to 75 cents, and if the Grand Forks rate be maintained and the East Grand Forks rate be put in, there would be a difference there of $10.25, and that, you think, would be an unfair discrimination made by these rates, without saying which one you think is wrong?

A. Without saying which one is wrong, I presume there would be, yes.

Q. Now, wheat from Wahpeton to Duluth, or Breckenridge to Duluth, has been proposed to be cut a cent and a half per hundred pounds, hasn't it?

A. 1.6 cents, yes.

Q. And on 50,000 pounds in a car would be what?

A. About $8.

Q. Another case of unfair difference or discrimination, you would say, would you not, without saying which is wrong?

A. Yes, sir; I presume that would be true.

Q. Now, take coarse grain, Breckenridge to St. Paul, what is the reduction made or proposed to be made in that?

A. 2.8 cents per hundred pounds.

Q. What would that be, about $11.90?

A. $11.20.

Q. Now, to maintain that rate to Breckenridge, the new rate to Breckenridge and the old rate to Wahpeton, would be another case of unfair discrimination as between those rates, wouldn't it, without saying which rate is wrong?

A. Yes, sir, that is true in all those cases, I think.

Q. Now, on coarse grain from Wahpeton to Duluth, or Breckenridge to Duluth, what is the cut proposed?

A. 3.6 cents.

Q. What would be the probable number of pounds in a coarse grain car,—50,000?

A. I think probably nearer to 40,000, as a usual thing.

Q. Figure it on forty, then.

A. About $14.40 a car.

Q. Now, without asking you to determine, in your own mind, for the purposes of this answer, which basis of rates is right, I will ask you, as a railroad man and a rate man, whether or not you do not think if the legislative rate is to be put into effect, that common fairness, in order to avoid unjust inequalities, would require a reduction of rates from points in Dakota for a considerable distance from the river on these commodities?

A. I don't think that would necessarily be true.

Q. Well, do you think it would be right for a town five or ten miles beyond the most easterly North Dakota town, to charge enough to absorb these differences that we have pointed out here; or don't you think that fairness, in order to avoid inequality (which is objectionable in rate-making) would require you to ease that off and extend back for a considerable distance before you reached the present rates?

A. My own opinion is that it would be necessary to grade the rate a short distance, but that is not the opinion of the railway companies, because they don't do that on grain coming from Iowa, for instance, into this state.

Q. Well, no matter about what the railroad companies do, I would like your view of it.

A. Well, as I said, my own personal opinion is that it would have to be graded a little in order to make any kind of a symmetrical tariff.

Q. It would have to be graded a good deal, wouldn't it, on a difference of $19 on a carload of soft coal from Duluth to Breckenridge and Wahpeton, you would have to grade back a good deal before you would get that $19 covered, wouldn't you?

A. I don't think that would need to be stretched so very far.

Q. About what distance would you grade up that $19 in, on a car of coal, to be perfectly fair to the North Dakota men?

A. That is a question I wouldn't answer until I could go to work and put it down in a form so that you could divide that amount of increase in rate among the number of stations.

Q. Now, this tariff, you said, made by the Commission, was made to equalize rates, as I got it?

A. I think it was an attempt in that line.

Q. Now, as I understand the principle of it, you first take a sum to cover both terminal services, then add to that sum another, based on distance, so much per mile; am I right?

A. So much for each five-mile haul.

Q. And that, divided by the five, would show what it would be for each mile?

A. Yes, that is true.

Q. And that, as the distance increases, the rate added for the straight-away haul decreases; that is true, isn't it?

A. After you pass 200 miles, yes.

Q. It is a constant until you get to the 200 miles?

A. 200 miles.

Q. Then for the next 200 miles, it is a constant, but half as much?

A. Yes, only the length of the division—

Q. In the expression of it in the tables you take five miles in the unit, in the first instance, and ten miles afterwards?

A. Yes, sir.

Q. But the allowance is twice as much per mile for the first 200 miles as it is per mile for the next 200 miles?

A. Yes, that is true.

Q. And after 400 miles is passed, it is a quarter as much per mile as it was for each mile in the first hundred?

A. Yes, that would be true; with the understanding, of course, that we really have no such a haul in our state.

Q. As a practical matter, there is no 500-mile haul?

A. I don't think there is.

Q. It doesn't amount to anything, if there is any; in fact, that is the truth about it, isn't it?

A. I think that is the truth about it.

Q. Now, in your opinion, it would not be right, under any

circumstances, would it, to go along for a considerable distance adding the constant item per mile for the straight-away haul and then change that to a higher amount for the straight-away haul for a certain distance and then go a ways and again lower it; you don't think that would be the right way to make an equal and fair tariff, do you?

A. No, I don't hardly think it would, Mr. Butler.

Q. You think, barring peculiar conditions, if there are any, which would require the contrary, that the plan on which this tariff is constructed ought to be followed, no matter how great or how short the haul?

A. Up to a certain point that is true.

Q. Yes, after the addition has been reduced so low that it ought not to go any lower, then addition of distance would not involve any greater reduction of the amount added for each mile; that is your idea, isn't it?

A. My idea is rather that when you arrive at a point where the cheapest and greatest economy has been reached, you should not reduce it beyond that point.

Q. That is what I had in my mind. There are some hauls more than 250 miles in Minnesota?

A. Yes, I think there is a haulage of about 320 miles, something like that.

Q. That is from here to Crookston, for example, or East Grand Forks?

A. Farther than that; it is up to the line that runs up in the St. Vincent direction.

Q. Now, take merchandise from here going out there, you think it would be wrong, and produce unfair results, to so construct a tariff that there would be added the low constant factor until you got to the 250 miles and then add again the high constant, do you not, for the rest of the way?

A. I think it would have the effect of making an unequal tariff.

Q. Yes, an unfair and discriminatory tariff, would it not?

a tariff without any reason in it, would it not?

A. Why, it would appear that way to me.

Q. But now, you think that if a shipment going from here to the points named on your Ex. 3-B, which would be on the Northern Pacific road, till we get to 300 miles—What was the distance up there to St. Vincent, 325 miles?

A. I think it is 325, something like that.

Q. Well, a place called Spiritwood, in North Dakota, is 321 miles. Do you think to make a tariff to that point it would be right to increase the addition per mile of haul sharply and as much as would be necessary to grade up in that distance?

A. I don't believe that there was any great or, (as you call it) sharp increase.

Q. Well, you graded up in how many miles?

A. About 35 or 40 miles, I think.

Q. Without regard to the degree of it at all,—I think we showed that it would be about double the rate per ton per mile on the west side of Moorhead that it would be on the east side, didn't we, yesterday?

A. Why, I don't think that way, Mr. Butler; you were comparing the difference between two rates instead of the rates for the entire haul.

Q. Well, I will come to that later, I will not mislead you or try to have you say anything that you do not intend to say, but I mean for the 24 miles east of Moorhead the allowance for that haul in your tariff would be only half as much as the allowance for the 24 miles next west of Fargo?

A. That is possibly true; I don't know as to that figure.

Q. So that that would be a sharp lift at the state line, wouldn't it,—doubling the allowance per mile?

A. I think that would be true, yes, if that was the figure for it.

Q. Now, that is the very thing you say ought not to be done, isn't it?

A. I think so, yes.

Q. And the reason it ought not to be done is because it results in a rate without any reason in it, and an unequal and an unfair rate, isn't it?

A. That might be true, but even at that, it would be doing nothing other than what is already in effect in Dakota.

Q. Yes, by the railroads.

A. By the railroads.

Q. Did it ever occur to you, in your work with the Commission, that if the railroad companies did everything exactly right, there would not need to be any Commission at all?

A. Yes, it has often occurred to me that way.

Q. So it therefore follows, does it not, that the Commission ought not to try to justify its own conduct, or the consequences of its own conduct, by adopting the things that the railroad companies are doing which requires the existence of Commissions, both state and national, to keep them from doing, isn't that true?

A. I don't believe that the Railroad Commission of Minnesota has adopted any of the principles that the railway companies have in rate-making.

Q. No, but you justify your plan of grading up on your Ex. 3-B, admitting that it is wrong, simply because the railroad companies themselves have done that thing?

A. My exhibit 3-B, Mr. Butler, was just made up for the purpose of showing how it could have been worked out in almost as equal a manner as it was worked out, that is, by the addition of an even constant quantity instead of an uneven constant quantity, and yet they wiped out that increase in say 40 miles instead of about 140 miles. It was merely an example.

Q. It was just a question of degree?

A. That was all.

Q. Your Ex. ZZ was framed for the purpose of comparing the rates on merchandise, under the classes, now in effect pur-

suant to the order of the Commission to Moorhead, with what the rates would be to points beyond if the whole rate per ton per mile or the average rate per ton per mile from Twin Cities to Moorhead were taken as a basis?

A. Yes, that is true, the rate per ton per mile at Moorhead.

Q. Yes, the average rate for the whole road, including the higher 200 miles with that part of the lower next 200 miles there is; that is true, isn't it?

A. No, the rate per ton per mile we have used there, is the actual rate per ton per mile allowed under the Commissioners' scale of rates.

Q. That is what I say,—it is the average of the whole?

A. Not the average of the whole, no, it is the rate per ton per mile.

Q. You divided the rate by the number of miles?

A. Yes, sir, that is right.

Q. And doesn't that give you the average rate per ton per mile?

A. I don't quite understand it that way.

Q. It gives you the rate per ton per mile, doesn't it?

A. Yes, sir, it does give you the rate per ton per mile.

Q. And it is the rate for each ton per mile, isn't it, for all the way?

A. Not for every class, no.

Q. I mean for one class.

A. Yes, sir, that is true for the first class rates.

Q. Now if the scale of rates were made on the basis that you have made ZZ, there would be the rise of rate crossing the state line which we have referred to in connection with your testimony as to Ex. 3-B, though the rise would not be so sharp, the allowance per mile, for the haul; that is true, isn't it?

A. I don't think it is true exactly at the state line, Mr. Butler; it would be at a station farther along, probably.

Q. Well, the next station?

A. The next station, probably.

Q. It would take effect right off after you cross the state line, substantially?

A. Yes, sir.

Q. So that would produce the wavy line that we have described, one rate for the first 200 miles (which would bring you out somewhere to Detroit), then a lower addition per mile till you got to Moorhead, then again a higher remaining constant until you got to Glendive, as indicated by Ex. ZZ, wouldn't it?

A. I don't believe that is so, Mr. Butler; I say that the addition or the rate per ton per mile going through to Glendive as you say, that is in effect at Moorhead would not produce any sharp rise or even a sharp fall.

Q. It would produce a rise?—I didn't say sharp.

A. I don't believe it would produce just the regular rise.

Q. It would rise again?

A. I don't quite think I follow your idea of that.

Q. Well, I will try to illustrate it roughly. You have seen graphic charts, upon which are projected these rates which are in evidence in this case?

A. I have seen some of them.

Q. And you are familiar, then, with the plan of them, with the purpose of them?

A. Yes, I have seen them.

Q. The purpose of this Ex. ZZ, as I understand it, was to show that the rates would not be as claimed by Mr. Baird, because, in your case, you would add for each unit of haul, the rate per ton per mile from St. Paul to Moorhead, whereas, he only added in the rates he talked about, the addition which was being made after you pass two hundred miles from St. Paul and approach Moorhead; that is the difference between the two plans, his exhibit and yours, isn't it?

A. Yes, sir.

Q. Now, I call your attention to this rough sketch that I have just made on the scratch-block. The straight line indicates distance; that is the one parallel with the edge of the page. The one running diagonally up, indicates the rise of the rate for the first two hundred miles. Beyond that, for a distance of forty or fifty miles to Moorhead, the rise is not so sharp, you observe. Then that line would be continued to Mr. Baird's scale of rates, but yours would rise gradually, isn't that it?

A. I think the reverse of that is true, Mr. Butler.

Q. Yours would go lower than Baird's, would it?

A. No, I think ours would follow the perfectly straight line farther out, because the same rate per ton per mile is being used from Moorhead west that was used to Moorhead. I don't think there would be a rise or a decrease in it.

Q. Here is the line that would come straight out, with you, it is a line that would run from St. Paul to Moorhead; this is the line that would run straight out, with you, isn't it, from here right straight out? (No answer.)

Q. Your criticism of Mr. Baird's rates is this, that he adds the factor per mile as you go on until he gets to the four hundred miles that you add in making a four-hundred-mile rate for the distance between two hundred and four hundred, isn't it?

A. I don't believe he added that.

Q. What do you think he added?

A. I think that he took the difference in the rate between two hundred and three hundred miles, say, whatever that happened to be, that he used that difference to credit between the one hundred miles beyond Moorhead—

Q. Until he got to four hundred miles?

A. I think so.

Q. When he got to the four hundred, he would do exactly what you would do if the state line were out there and he divided again, didn't he?

A. I couldn't follow that. When it got to a certain point I couldn't imagine how they had arrived at the rates they had put in.

Q. Now, let us see. Suppose we would take the rate to St. Cloud instead of to Moorhead, and use it just as you have used it in ZZ; you would get a much higher rate, wouldn't you?

A. You would get a very different result, I don't know just what it would be.

Q. You would get a much higher rate to Glyndon and Bismarck and all these Dakota towns, wouldn't you?

A. I couldn't say, without working that out. I haven't figured. I think you would get a very different result.

Q. Can you tell me whether or not, under your schedule, the rate from Twin Cities to St. Cloud would yield a higher rate per ton per mile than from Twin Cities to Moorhead?

A. I think I can.

Q. You know it without figuring, don't you?

A. I am sure that it would, yes.

Q. I didn't ask you what it was. You are sure that it would. See what point is about two hundred miles on the Northern Pacific,—Detroit?

A. About that, yes.

Q. So if you would take the rate to Detroit instead of to Moorhead, and use it just as you did the Moorhead rate here, you would procure a higher rate per ton per mile than the Moorhead rate, wouldn't you?

A. I think a very like one.

Q. And these rates that you built up to Casselton, Valley City, Jamestown, Steele, McKenzie, Bismarck, Dickinson and Glendive, would therefore be increased, wouldn't they?

A. Admitting that they would produce a higher rate per ton per mile, they would, yes.

Q. Now, if the state line extended to Bismarck, to the Missouri river, the rates which Mr. Baird indicated as the exten-

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sion rates are right, are they not? That is, if you were making it according to the rules of your schedule, you would make Baird's rates, wouldn't you?

A. No, sir, I would make those rates right there (referring to Deft' Ex. ZZ).

Q. You would, eh? Aren't you mistaken about that?

A. I don't think so.

Q. What is your first class rate for five hundred miles?

A. 74.7 cents.

Q. What is it on ZZ to Bismarck 443 miles, as you built it up?

A. 96½ cents.

Q. What is your rate for 443 miles in the schedule?

A. 72.8 cents.

Q. So ZZ does not show the kind of rates that would result from the application of the Commission's schedule to the same distances, does it?

A. I don't know, taken as a whole haul, whether it would or not, but starting in at the rate of 250 miles, it would not.

Q. The Commission allows what for 445 miles?

A. 72.8.

Q. And you figure out, according to your plan on ZZ, what?

A. 96.5 cents.

Q. Now, take McKenzie, and give us the same, according to the Commission's schedule and according to your ZZ.

A. According to the Commission that would be 71.8.

Q. And according to you what have you got it?

A. 92.6.

Q. What is the next point?

A. Steele.

Q. What is the distance?

A. 4[illegible] miles. The Commissioners' rate would be 69.8.

Q. And yours?

A. 87.2.

Q. And the next point?
A. Jamestown.
Q. The Commissioners' rate would be what?
A. 64.9.
Q. And you figure it at what?
A. 74.3.
Q. And the next point?
A. Valley City.
Q. The Commission's rate would be what?
A. 61 cents.
Q. And you figured it out to be what?
A. 67.7.
Q. And the next point?
A. Casselton.
Q. The Commission's rate?
A. 57.1 cents.
Q. And Ex. ZZ figures it out to be what?
A. 66.7.
Q. At Moorhead they are alike, I suppose?
A. The rates are just the same.
Q. So that you see, do you not, Mr. Flinn, that Ex. ZZ does not express the Commission's rates for the distances named to Casselton, Valley City, Jamestown and the like?
A. I don't see that at all, for the simple reason that the rates in this schedule commence at five miles; that commences at 250. I don't think you can compare the two together just on that account. That is, not in the way that you are doing it.
Q. So you think if you would run this back to five miles you would come out differently? You started at the last point, didn't you, in the start, where they would be the same according to your method; now, do you think if you would run on back to the termini here, on the eastern side of the state, you would come out any different?
A. I think if you started at the five-mile haul, it would make

a vast difference in it, yes.

Q. Would it increase the rates that you figured out on Ex. ZZ or diminish them?

A. I couldn't say as to that without working it out.

Q. Now, looking at Ex. 3-A, this shows, does it not, that, with respect to the commodities named under the tariffs proposed from here to Moorhead or Fargo, if they be treated alike, the business men at Fargo could procure shipments from here in carload lots to Fargo, break the shipments up into less than carload lots and send them to Mandan, New Salem, Glenullen, Hebron, Dickinson and Beach, at a rate less than the jobbers here could send through the same goods in less than carload lots all the way?

A. I believe that is what it shows.

Q. But the Fargo merchants could not buy goods here in less than carload lots and take the proposed rate and ship them on to these Dakota towns named on the exhibit for a less rate than they could be shipped through in less than carload lots; that is true, isn't it?

A. That is true, yes.

Q. And, in like manner, the merchant could not buy in carload lots here and ship the same goods through in carload lots, and in Fargo reship, rehandle or reload them, as the case may be, for less than the through carload rates, that is true, isn't it?

A. That is true, yes.

Q. Is this the matter that you referred to that the jobbers of the Twin Cities complained about, that it enabled the Fargo merchants, by this proposed rate, to come down here and get their goods in carload lots and break them up in less than carload lots and reach all these points at a lower rate (less than carload), than the jobbers of the Twin Cities and Duluth could reach the same points less than carload lots all the way?

A. Well, that was, I think, one of the things that the jobbers here came into the hearing about and gave some testimony, one

or two of them, not very many.

Q. Was that one of the subject matters of opposition to the order of May 3, 1907?

A. I believe it was, Mr. Butler. That was the distributing rates you refer to?

Q. Yes.

A. Yes.

Q. That met with the very sharp opposition of the jobbing interests of St. Paul, Minneapolis and Duluth, the idea being that the proposed arrangement would furnish opportunity at Grand Forks and Fargo to beat them out in the business?

A. I don't believe there was any opposition from Duluth, and there were just two from St. Paul and one from Minneapolis.

Q. Well, maybe they never got to you, they did to me. Now, get your schedule, let us assume three points, St. Paul, St. Cloud and Moorhead. The rate to St. Cloud is higher, is it not, than would be the proportion of the rate to Moorhead, dividing the Moorhead rate on the mileage basis?

A. I don't believe I follow that question.

Q. Getting at what it would earn from here to St. Cloud on the proportional basis.

A. I think that is true.

Q. The rate per mile, then, for any intermediate distance, under your schedule will be higher than the rate per mile for the longer distance?

A. That is true.

Q. That ought to be true, too, hadn't it, in order to be fair?

A. I think it should, yes, sir.

Q. And any system of rates that ignores that fact, imposes inequality, does it not, along the line?

A. Yes, I think it would, in all cases.

Q. Have you examined to see how that would work out on the merchandise rates that were in effect on the Northern Pa-

cific road at the time of the taking effect of the merchandise rates here in controversy; that is, to find out whether or not the rate allowed by the Commission from here to Moorhead would be as much as the mileage prorate for the distance from here to Moorhead would be of the interstate rate going to points beyond?

A. I have not examined that, Mr. Butler.

Q. You can't tell us, then, to what points it would be true that the rates fixed by the Commission to Moorhead would be less than the mileage prorate for the Moorhead distance on interstate shipments going to North Dakota and Montana?

A. I couldn't tell you that; I have not figured that out.

Q. If it were to appear to you that Fort Keogh, 746 miles from the Twin Cities, had a rate of $1.08, that the proportion for the Moorhead distance of 238 miles, or whatever it is, would yield 35 cents and the Commission's order fixed 27 cents, it being fourth class, we have a case there which you have just condemned as resulting in unfairness, haven't we?

A. I should say so, judging by what you have stated there.

Q. Now, if that same thing would be true—that the mileage prorate on the interstate haul for the Moorhead distance would be greater than the amount fixed by the Commission to Dickinson, Glendive, Miles City, Livingston, Helena, Missoula, Spokane and intermediate points, you would say that that kind of a schedule maintained was wrong and would produce inequalities and unfairness, wouldn't you?

A. Why, I don't think so; I think that would not prove that the schedule of rates put in by the Commission was unfair.

Q. No, I didn't ask you to do that, but it does prove, does it not, that the maintenance of both is unfair, that one or the other must be changed and you have got to get them on a reasonable basis; it does prove that, doesn't it?

A. I should say it did, that one of them was in error somewhere.

Q. So then it follows, does it not, in order to have the territory referred to in Ex. 46-Baird enjoy reasonable and equal rates, that these interstate rates must come down or these state rates must go out and other higher rates go in? Now, that thing follows, does it not?

A. I don't hardly see it that way, Mr. Butler. I think, as I said before, that the rate to Fort Keogh,—you couldn't very well measure that by such a system as they have got there, or you couldn't say that the rate in Minneosta for the distance from here to Moorhead was unreasonable.

Q. No, I am not asking you that, but I say that a plan of rates that produces the results that we have just referred to is a poor plan and results in inequality and unfairness along the line, doesn't it?

A. There is something wrong with it, either one side or the other.

Mr. O'BRIEN: If these results are produced. Do you assume that those are produced? Do you assume that those results are produced?

Mr. BUTLER: Mr. O'Brien, I think you have not been following, or do not bear in mind the substance of Complainant's Ex. 46. These are the rates that were in when the Commission's order went in.

Mr. O'BRIEN: I have it absolutely in mind. You say rates which produce certain results. Now, these rates do not produce any such results. If the witness is to assume results which you claim, that is another matter; he ought to understand what he is assuming.

Mr. BUTLER: Well, if you want to tell him what to say about it, do so,—

Mr. O'BRIEN: Oh, that is hardly—

Mr. BUTLER: —I have no objection to your doing so.

Mr. O'BRIEN: —a necessary remark, and you know that was not intended, and your suggestion of that sort is unnecessary and untrue. I hate to interfere with your dramatic pounding of chairs and rolling of eyes and everything of that sort, but I insist that if the witness is to answer on anything that is to be assumed, he shall be told what the assumption is.

Mr. BUTLER: Well, do as you like about it, but state your objections in the form that suits you the best, that you think is in accordance with the proper presentation of the matter.

The MASTER: Let us proceed with the case, gentlemen. If counsel thinks that the witness does not understand the question, I think he may call his attention to the question.

Q. Did you misunderstand the question in any way, Mr. Flinn?

A. Why, I don't know. I could hardly say whether I misunderstood it or not. I think possibly I may have done so. As I understood the question, or the substance of the question, you were assuming that the rate that they have in that exhibit is correct; that is, that it is a correct rate, and that it would produce an inequality as between the mileage proportion of the through rate and the rate to Moorhead locally?

Q. Yes, the exhibit so shows, the rates that were actually in when your Commission put in effect its rates; and I understood you to say that such inequality would appear at Dickinson, Glyndon, Miles City, Billings, Livingston, Helena, Missoula, Spokane and intermediate points, as to some or all of the classes. Now, I also understood you to say that a system of rates that produces that result, there is something wrong with.

A. Yes—

Q. That it is unfair and it results in inequalities?

A. That is true, I presume, assuming that the rates in that exhibit are correct and that the method they have used in following it out in producing those results is correct.

Q. Yes, sir, if the computations have been made correctly, and the like?

A. That is it exactly.

Q. And now, you also say that, in order to get a fair schedule of rates, reasonable in form, avoiding these inequalities, that these interstate rates, to the North Dakota and Montana and Washington points, must come down or the Minnesota basis to Moorhead go up, don't you? Without saying which is right or which is wrong or which ought to happen, but in order to get the kind of schedule there ought to be, that has to happen, isn't that true?

A. I think that would be true to a certain extent, yes.

Q. Now, you said, in your direct examination, that there was no necessity of extending these rates into North Dakota, and you also said that since 1870 the railroad companies had not voluntarily, to any great extent, reduced their rates.

A. I believe that was right, yes. That was speaking of the merchandise rates, of course.

Q. Now, as a matter of fact, interstate rates as well as local rates, have come down since 1870, haven't they?

A. Yes, they have, Mr. Butler, that is true.

Q. And they have come down usually, have they not, as the result of the action of the states through commissions or legislatures?

A. I think that is perfectly true.

Q. And not by reason of the voluntary conduct of the railroad companies themselves, or the act of national authority over interstate commerce; that is true, isn't it?

A. Excepting where the railroad people wanted to put in a lower rate, I think that is true.

Q. Yes, but as a general rule, that has not been the case?

A. No, sir.

Q. So the reductions, be they great or small, that have taken place generally since 1870, both on the local and inter-

state rates, have taken place as the result of state action through their legislatures and commissions; isn't that the truth?

A. I think to a great extent that is true, Mr. Butler. I am only speaking of that from what I have read, not from my actual experience.

Q. But that is your understanding of the truth of the matter, historically, isn't it?

A. Yes, sir.

Attorney General YOUNG: Mr. Hill says that is not true.

Mr. BUTLER: Mr. Staples says it is.

Q. Do you agree with this statement, "There have been many general rate reductions in different states followed by reductions on interstate traffic. These have all been brought about by the affirmative action of state authorities." Do you agree with that statement?

A. It depends a good deal on the circumstances surrounding it. There are always some qualifying circumstances.

Q. You are familiar with the address that Mr. Staples, one of the Defendants here, Railroad Commissioner, made before the national association of railway commissioners, in 1907?

A. I neither read it nor heard it.

Q. You never have?

A. I knew that he made such an address, yes.

Attorney General YOUNG: If you are going to use that, we want some of Mr. Hill's addresses to file with it.

Mr. BUTLER: All right. You can put in some of your own if you want to.

Q. Now, if it is true that all of the reductions that have been made, as you said that your understanding was,—

A. The greater share of them, not all of them.

Q. I mean the bulk of them—have been due to the action of states, do you not think, Mr. Flinn, that the statement that no interstate rates to points in Dakota and from points in Dakota,

must necessarily follow these reductions in Minnesota made by this Commission, is too broad a statement to be true?

A. No, I don't think so, because of the fact that North Dakota, as I understand it, has a railroad commission of its own, that that state is paying to look after the welfare of the people in Dakota.

Q. They do not fix interstate rates up there any more than you do here?

A. No.

Q. But your idea is, that if both of you together would reduce rates, the interstate rates would have to come down, isn't it?

A. Well, it has never been my idea about it.

Q. Is it your idea now, after this examination, that no interstate rates at all need to come down by the application of the rates prescribed in the order and the act, Chapter 232? Is that your view of it?

A. Well, you are putting me in the position, Mr. Butler, of passing an opinion on the question that people who are paid much larger salaries and are supposed to have a great deal more experience in than I have, cannot answer.

Q. I don't want you to do anything that you don't desire to do, but you did say, in direct examination, that you thought there was no reason for the extension of these rates to North Dakota?

A. I qualified that, I think, by saying to any great distance into North Dakota.

Q. Now, you have told me, if I understood you aright, that as a matter of fact, the rate reductions which have occurred since 1870, both local and interstate, for the most part, have been the result of state action. Now, that is true, isn't it?

A. So far as this state is concerned, I think that is perfectly true.

Q. Now, I want to ask you whether you do not think that,

as a result of the state action here in litigation, interstate rates must necessarily come down, some interstate rates, the extent of which I will not ask you to define?

A. Yes, I think possibly that some might have to go down in the estimation of the railroad officials.

Q. Some that were in, I mean.

A. Some that were in; but that they are not all of them necessarily forced down is proven by the statement that I put in with reference to the first-class rates in this state as compared with the first-class rates in Iowa and South Dakota.

Q. The only difference between you and me, then, as I understand it, is a difference in degree—that some must come down, you agree, but not so many as we claim? of the interstate rates, I mean.

A. Well, when you say they must, Mr. Butler, you are assuming, I think, that the State Commission is going to exercise jurisdiction over interstate rates, and that is something that is never done.

Q. No, in order to avoid unfairness and discrimination,—And that you admit would result here?

A. Yes, I think that is true to some extent.

Q. —in order to keep away from discrimination, the railway companies must, in your opinion, by reason of the action of this State, here in litigation, reduce some of the interstate rates?

A. In order to keep away from unfair discrimination.

Adjourned until the morning of Saturday, February 6th.

FEDERAL BUILDING, St. Paul, Minn., Saturday, February 6, 1909.

The hearing was resumed at 10 o'clock A. M.

ALLAN L. FLINN,

recalled as witness on behalf of Defendants, testified:

RE-DIRECT EXAMINATION.

By Mr. O'BRIEN:

Q. Mr. Flinn, in your cross-examination you were asked a number of questions with reference to the possibility or advisability of maintaining a different rate to Minnesota points upon the western border of the state and Dakota points upon the eastern border of Dakota, and in connection with that your attention was called to Ex. 46—Baird and possibly some other tables of Mr. Baird. Have you prepared a statement showing your views with reference to Ex. 46—Baird and what you intended to show by your Ex. ZZ?

A. I have.

Q. Please give that statement.

A. Well, the tables that were submitted by Mr. Baird, with more especial reference to exhibits 44, 45 and 46, to my idea, are misleading, and have really no application to the present case. In the first place, the order of the Railroad Commission has absolutely no force at all outside of the boundary of the state, any more than the schedules of rates which were gotten up by the Iowa legislature (anyway, I think it is known as the Iowa distance tariff) or the Illinois distance tariff have any real effect outside of the states for which they were framed. It would be just about the same thing to say that our distance tariff was to govern the rates in Dakota as to say that the Washington state distance tariff should govern the rates across to Japan, as far as any authority of this Commission of Minnesota is concerned. As applied to the main line of the Northern

Pacific Railway, the order of this Commission has no application beyond Moorhead; but the haul to Moorhead, of I think 238 miles, is of about sufficient length to give the greatest economy of operation or haul (whichever you like to call it) that would be reached. So, if the Northern Pacific Railway furnished relatively equal rates from the Twin Cities to points beyond Moorhead, there would be no chance for a claim of discrimination under those rates, either just or unjust. It seems more likely that the complaints of discrimination would come from the people of Minnesota, because the operation of the roads in Minnesota hardly seems as if it could be as expensive as the operation in Dakota or Montana or Washington, because of the difference in, we will say, the water supply and the snow they have to contend with in Dakota and the length they have to haul coal for use on their trains there; and then when they get farther west, into the states of Montana and Washington, they have the mountains to contend with there, which we haven't in this state. As an actual fact I can't see that there has ever been any pretense on the part of the Northern Pacific Railway of reducing their rates from the Twin Cities to North Dakota points to the basis shown in Mr. Baird's Ex. 46. I think it is column 6 that shows the rates that it was apparently the intent of that exhibit to show would be necessary. As an actual fact, what was done, when the Northern Pacific Railway adjusted its rates from the Twin Cities into eastern North Dakota, was to make reductions on almost the identical basis shown in Exhibit ZZ, namely 4.36 cents per ton per mile, using first class as an example, which is the rate per ton per mile allowed under the Commissioners' schedule at Moorhead. I think that an examination of Ex. ZZ will show that 4.36 cents per ton per mile is almost the exact basis of rates maintained by the Northern Pacific Railway from the Twin Cities to Jamestown, Valley City and Bismarck. The old rates beyond Bismarck and as far west as

Billings being on almost that basis, no readjustment was necessary, and the rates were maintained, both before and since the order of the Commission. At Livingston, Montana, and at stations beyond, as far as the Pacific coast, the rates from the Twin Cities are on a much lower basis than 4.36 cents per ton per mile. The misleading feature of the schedules presented by Mr. Baird, including Ex. 46, arises from the fact that they are based upon that portion of the Commissioners' schedule which is absolutely inoperative, on account of there being no such a length of haul in the state as 500 miles, and on the Northern Pacific there is no haul longer, I don't think, than 300 miles; the main line proper leaving the state at a distance of 238 miles. What the Commission might have done, and what would have been the effect, if its jurisdiction extended 500 miles beyond Moorhead, is simply speculation, and, therefore, Mr. Baird's tables do not illustrate any actual fact, and his assumption being incorrect, it necessarily follows that his tables are incorrect and misleading. The actual facts are that the rates as shown in Ex. ZZ, and the rates per ton mile shown in that Exhibit, are almost the identical rates published and maintained to the stations named by the Northern Pacific Railway for almost two and one-half years, and not the rates shown in the exhibit presented by Mr. Baird. As the rates as shown in Ex. ZZ have remained in effect for that length of time, it is certainly fair to assume that there never has existed any necessity for making any such radical change in the rates as Complainant's Ex. 46 attempts to show.

Referring to State's Ex. 3-B, which shows a proposed scale of rates beyond Moorhead (not any rates that were actually put in, but just simply a question of grading the rates out from Moorhead that I got up for the purpose of information in the case) I think, with all respect to the tariffs of the Northern Pacific Railway that that method of grading those rates out that I employed in making that proposed tariff would compare pretty

favorably with the Northern Pacific distance tariff from Moorhead into Dakota. Now, Mr. Baird's Ex. 35 shows those distance rates, and if anybody will examine that exhibit they will find that, for the shorter distances, I think up to fifteen miles, or ten miles, rather, the rates are the same for the two distances; that beyond that, taking always the first class as an example, the rate is raised, in some places 1 cent for each five-mile haul, in other places 2 cents, and in some other places, 3 cents, whilst the proposed rate that I have in my exhibit was raised an even 2 cents for each five miles or rather for each interstation haul, which is pretty near five miles apart, as a rule. Now, for that entire haul that I tried to grade out that reduction in rates, there was a reduction, I think, of 20 cents, (I haven't that exhibit, but I am pretty sure that is what it was) and if you take the same length of haul in the Northern Pacific distance tariff, you will find that there is just about the same amount of difference for the same length of a haul, only that it is not graded out evenly.

Q. Mr. Flinn, you were asked to compute the rate per ton per mile upon the schedules contained in Ex. 3-B for a haul from Fargo to twenty miles west of Fargo, and upon the Commission's order for a haul from twenty miles east of Fargo or east of Moorhead to Moorhead. Are you able to imagine any such hauls as those described unless they are independent and original shipments from one point to another?

A. No, I don't think there would be any such haul except it was a shipment originating at some station and going direct to Moorhead or from Moorhead to some given station twenty miles away.

Q. Is it possible to test a rate by segregating a part of the haul and applying an arbitrary portion of the entire rate to that segregated portion of the haul?

A. Not in my opinion; it is not.

Q. There has been something said in this case about end-

hauls; is it your judgment that where there is an end-haul it pre-supposes a beginning-haul?

A. Why, I should say so; there has got to be a beginning and an end to all things.

Q. You don't think there could be an end without a beginning?

A. I don't think so, Mr. O'Brien.

RE-CROSS-EXAMINATION.

By Mr. BUTLER:

Q. In your examination of Baird's exhibits 44, 45 and 46, to which you have referred in this statement which you have just made in re-direct examination, did you find any arithmetical inaccuracies or mistakes?

A. I didn't check it all over, completely, Mr. Butler, but I didn't see any in what part I did go over.

Q. Your criticism, then, of those exhibits does not go to the facts purporting to be shown, but simply to the effect of the facts so shown?

A. Well, I think I ought to answer that by saying that I didn't think they were facts, Mr. Butler.

Q. Well, the data used are correct, and the computations are correct, as far as your examination went?

A. I don't think so.

Q. What computations were wrong, if any?

A. Well, I didn't mean the computations. I have simply said that the rate that was used in column 6 was wrong, as it has no existence in fact. That is what I meant.

Q. No, but it purports to be a rate built on a certain theory, doesn't it?

A. Oh, yes.

Q. And if that theory was used, it was rightly built, wasn't it?

A. If that theory was used.

Q. Your criticism is against the theory and not against the correctness of what the exhibit purports to show?

A. I didn't go into the arithmetical question of it at all, Mr. Butler.

Q. Well, now, let us see: Suppose we have a haul 250 miles long straight away from here to the state line, and let us consider a haul to a point half way to that state line; you hold, do you not, that the rate for the 250 miles ought not to be more than twice as much as the rate for 125 miles?

A. I should think not.

Q. It ought to be less than twice as much on the theory on which the tariffs in this order and the act of the legislature are made; isn't that true?

A. Yes, I think that is true.

Q. So if you have a rate to Moorhead, 250 miles, and a rate beyond Moorhead 125 more, making 375 miles, the Moorhead rate ought, in your opinion, to be at least as much as three-quarters of the 375-mile rate, assuming the conditions and cost of operation to be the same?

A. I couldn't say as to that, for the simple reason that, as I said in what I just read here, it is impossible to tell what the Commission, or what any rate-making body, would do in a supposititious case.

Q. I am not asking what they would do; I am asking what your idea is touching the equality of rates. I will make a simpler example: Take it in a Minnesota haul for 200 miles, and another for 300 miles; the 200-mile rate ought to be at least as much as two-thirds of the 300-mile rate, or more, ought it not, and is more according to your schedules in every instance?

A. I believe that is true as far as our schedule is concerned, yes.

Q. And you think that right, don't you? and you think

that a universal truth with respect to railroad rates based on distances of haul?

A. No, I don't know that I do, Mr. Butler.

Q. It is true in every rate in controversy here, both the class rates and commodity rates, is it not?

A. You mean as far as respects the Commissioners' schedule?

Q. Yes, sir.

A. I think it is.

Q. Running in the class rates to 500 miles and in the commodity rates to distances of 400 miles, the rates that they have made; that is true, is it not?

A. I don't hardly think that it is quite true, no.

Q. Is there any case in the class schedule, or in the commodity schedule in litigation here, where the shorter haul does not take more than its mileage proportion of a longer haul?

A. I don't believe I have examined that schedule close enough to answer that question.

Q. Well, you know how it is made, don't you?

A. I do.

Q. You start out with an arbitrary figure to cover both terminal services, don't you?

A. That is the idea.

Q. And you add something for the straight-away haul measured by miles, don't you?

A. Yes.

Q. And the farther you go the less is the amount added for the straight-away haul, isn't it, going in steps?

A. After 200 miles.

Q. So then it necessarily and arithmetically follows, does it not, that in every instance a shorter haul is allowed a greater rate than its mileage proportion of the rate for a longer haul? That is true in every instance, isn't it?

A. If you mean by that that it is the shorter haul which

has a greater rate per ton per mile than the longer one, I think that is true.

Q. Yes. Well, that is the same thing?

A. Well, I didn't understand it just that way, that is all, Mr. Butler.

Q. Well, it comes out the same way, doesn't it? Now, that is right, isn't it, as a matter of rate-making?

A. Well, it is in my opinion, I think.

Q. And any rate that violates that, must justify that violation by a change of conditions, must it not?

A. Well, as I say, I wouldn't answer it, I couldn't answer such a question as that.

Q. Why?

A. Well, because, for the very reason that I stated in my testimony that I read here a little while ago, that, as far as our state is concerned, I don't believe there are any such conditions, and what they do in Dakota is something that I am not competent to pass on; I don't know anything about it.

Q. There is a great diversity in this state as respects density of population, topography of the country, character of the traffic and earnings per mile of track of the roads, is there not?

A. Yes, I think that is true, and I think it has been recognized by the Commission.

Q. The rates are the same and on the same theory, in all parts of the state, are they not, so you have found, as a matter of fact, no conditions which justify a departure from the principle of making these schedules; isn't that true, in the state?

A. No, they have been departed from.

Q. In the schedule by the orders of the Commission?

A. Yes. sir.

Q. Call attention to the exceptions to those principles.

A. I think I did, in my previous testimony, speak of one or two roads that have been exempted from the application of the Commissioners' rates.

Q. Oh, yes. Well, aside from those instances.

A. I don't know of any, aside from those particular instances, where the rates have been modulated by an order of the Commission.

Q. Now, the principle of these rates on which they are made is: start out with enough to cover both terminal services, and then add enough for the haul under the circumstances, decreasing as the distance is increased, which has become an axiom in railroad rate-making, hasn't it?

A. That was what was done in the case of the Commissioners' schedule, but I think that is only a theory as far as regards laws of other rates.

Q. You endorse the theory as sound?

A. Yes, I think it is a good principle.

Q. So the farther you get away, till you get down to the minimum, the less is allowed for each twenty miles or fifty miles or one-hundred miles to cover the straight-away haul?

A. Until you get to a given point where I don't think there should be any further reduction.

Q. That is right, and 400 miles was considered to be that point in the class rates, and 200 miles, practically, in the commodity rates?

A. I couldn't say, Mr. Butler, as to the commodity rates. I didn't make those up myself.

Q. Well, I am right as to the class rates?

A. I am not sure about that. It is two years or more since I made that up; I couldn't recall.

Q. Well, there is a certain addition for each mile until you get to 200 miles?

A. Yes.

Q. It goes in steps of five miles the addition for first class being .98 of a cent per hundred pounds?

A. Yes.

Q. And when you get to 200 miles, that same addition is

made for every ten miles, isn't it?

A. Yes, that is correct.

Q. And when you get to 400 miles, that same addition is made for every twenty miles, isn't it, and the other classes on their percentage relation as expressed in the caption of the schedule?

A. I believe that is true.

Q. That is true, isn't it?

A. Yes, sir.

Q. You are sure of that. So that the amount allowed for the straight-away haul, between 200 and 400 miles, is half what is allowed for the first 200 miles?

A. Yes.

Q. Now, you would think it would be wrong, would you not, to double the allowance for the last 200 miles over, as compared with the first 200 miles? You would think that would be a wrong way to make rates, wouldn't you?

A. Yes, I would.

Q. Or any less part of the haul than 200, if the difference in rates between 150 and 200 miles was a certain amount, (we will say 4 cents) you would think it would be wrong to make the difference 8 cents between 250 and 300 miles, would you not?

A. I should think so, just looking at that as a kind of abstract question.

Adjourned.

FEDERAL BUILDING, St. Paul, Minn., Monday, February 15, 1909.

The hearing was resumed at 10 o'clock A. M.

DWIGHT C. MORGAN,

recalled for further cross-examination, testified:

By Mr. BUTLER:

Q. Mr. Morgan, you were to make some further examination of this sectional map which includes the St. Paul Union Depot property; did you examine book 1, sheet 1, to ascertain whether or not a change of the size of the Sections 1, 2 and 3, without changing the aggregate area included in the three sections, would affect the result of your computation? I would like to have the result of your examination on that point.

A. As I recall the question that was put to me, it was to divide up Section 1 of the Union Depot property into four sections to ascertain what the effect of that would be upon determining the value of the Union Depot property. That plan divided between Broadway and Olive, between Olive and Locust, between Locust and Neill and between Neill and Brook streets, extending from Sixth street through to the river. The value of the property on this plan, between Broadway and Olive streets, gives a true value, per acre, of $93,975, and a railroad value of $164,454.

Q. That is, the two blocks in question, between Broadway and Olive?

A. The two blocks in question, between Broadway and Olive.

Q. What was the value of those two blocks in question, as you figured it in your original subdivision of your sections?

A. Well, that is the same as we figured it originally, the base is precisely the same. The difference between this computation and the one that I made in the first place, is this: that, instead of taking the two blocks alternately, and carry-

ing them through from Sixth street to the river, I took the average value of the property between Broadway and Brook street and then produced that towards the river from Sixth street. Now, any property between Sixth street and the river which lies exactly parallel, and of equal width, will produce, by either process, whether you take the average between Broadway and Brook street, to begin with, or whether you take it by spaces of two blocks, as requested by Mr. Butler; the result produced would be exactly the same. A difference, however, does exist when applied to the Union Depot property. The reason for that is that the Union Depot property is not of equal width between Broadway and Brook street, it is, you might say, something like the tail of a fish; and, proceeding with the first two blocks, we get a true value of $93,975 and a railroad value of $164,454; between Olive street and Locust street we get a true value of $80,242 and a railroad value of $140,528; between Locust and Neill we get a true value of $80,302 and a railroad value of $140,528; between Neill street and Brook street we get a true value of $59,542 and a railroad value of $104,198.

Q. Do you get the same value for all of the land included in Section 1 by the method that you first applied and by the method that you have just described?

A. It would produce the same result.

Q. Exactly the same result?

A. Exactly the same result. Following this process out, however, to the end, as applied to the Union Depot property—

Q. Well, my question was as applied to the Union Depot property. The thing we are considering now is only that Union Depot property which is included in your Section 1 in this map. What I wanted to ascertain was, whether or not the value you get by subdividing it into sections two blocks long, is the same as the value that you get in subdividing it as you first did in one division, for the Union Depot property.

I am not speaking of any other property now but the Union Depot property.

A. It is not the same.

Q. How much is the difference?

A. There is a difference of $123,847.

Q. What was the value that you first fixed on it, by taking it as one tract; that is, Section 1, what was the value by the first method?

A. We would get $1,353,049.98.

Q. And by the method I asked you to apply?

A. We would get $1,229,202.

Q. That is more?

A. Less.

Q. That makes a difference, then, of about ten per cent, doesn't it? About ten per cent less by following the plan that you have described?

A. Now, the reason for that is, as I stated, I think, several times, in my direct testimony, that if I had undertaken to go into the ultra-refinements of every detail that this problem possesses, from beginning to end, I wouldn't have been through in ten years; but the plan that I have pursued, as I believe in most all cases, shows that I took the liberal side of the proposition and let the benefit accrue to the Railroad Company. That is demonstrated here, because, by pursuing this more exact process and taking the exact acreage that lies within the two-block limits owned by the Union Depot Company, produces a less value than we get by taking the average; and that is because there is more property owned between Neill street and Brook street of a low value than is owned between Broadway and Olive street of a high value. The result is that by that process it brings down the value of the property as a whole.

Q. Did I ask you to make a test as to the value of Section 2 by including within the section the land farther to the north, over to Fourth street?

A. I don't recall that you did.

Q. At any rate, you haven't done it?

A. I haven't done that.

Q. Now, what would be the effect if you had included in Section 1, a tier of blocks two blocks in depth, up to Wacouta street, on the westerly end of the section, where it is a bare end now; would that be to increase or diminish the value?

A. That would probably increase the value.

Q. Very much?

A. Yes, it would increase it considerably.

Q. A great deal, wouldn't it?

A. Yes, it would increase it considerably.

Q. Now, that really presents an exception to your general theory, doesn't it? You generally attempt to find property all around the railroad property in each section to be valued?

A. Where it can conveniently be done, yes. That was the general plan.

Q. Now, there is a step on the westerly end of Section 1, where there isn't any property at all taken in; you stop at this street where the railroad property stops?

A. That is correct. As I stated, we took Sixth street as a basis right straight through and measured it at right angles.

Q. Don't you think, Mr. Morgan, it would have been right had you taken in the property between Wacouta and Broadway, or between Bassbel and Broadway?

A. No, I don't think it would have been right to do that, it is an entirely different class of property; it didn't appeal to me as being a fair proposition to do that. Now, to verify that, take the testimony which was given by Mr. Watson, in the Northern Pacific case: on page 629 (of the Reporter's transcript) he says, "Starting and agreeing upon the valuation of the Union Depot terminals from Sibley street to the eastern terminus, it fixed relatively the value of property of all other roads immediately adjacent; not necessarily the same, but it

formed the basis." Now, then, I have just commenced the other way, and I have taken this as a basis. It is relatively established.

Q. Well, in your opinion, the reason you left out this property between Wacouta and Broadway and between east Third Street and east Fifth or Sixth, was because you thought it was not, on the average, of like value of the railroad property to be valued?

A. I don't think it is, no.

Q. And that is the reason you left it out?

A. Yes.

Q. So it becomes a question of judgment, then. I might think, or some other reasonable man might think, that the block between Broadway and Pine was, in fact, similar to the block between Rosabel and Broadway or the tier of blocks, but you think they were not?

A. No, I don't think they are of the same value.

Q. And so it gets down to a question of your judgment, doesn't it?

A. It does, on applying that section.

Q. Don't you think there is as great a similarity between the tier of blocks I have mentioned between Rosabel and Broadway as there is between the tier of blocks between Fifth and Sixth—

A. No, sir.

Q. —and the property on the Mississippi river front which you have taken as a criterion?

A. No, I do not.

Q. Your idea is that the tier of blocks that I last mentioned, between Fifth and Sixth from Broadway to Brook street, is, on the average, more like the Mississippi river front, where the Milwaukee Road owns the land shown in Section 1, than is the tier of blocks between Rosabel and Broadway, as compared with the property next abutting it?

A. No, I haven't considered the Mississippi river. I let the railroad companies take that into consideration; that was not a part of my plan.

Q. I thought you valued this, yourself.

A. I did, but I say I valued it relatively, and I let the Railroad Company establish the relation between this point and that point. Now, whatever that relation was I let it work out.

Q. You don't think, yourself, now, do you, without backing up and testifying by what the railroads did, you don't think, yourself, that there is greater similarity or relation, or that the relation is more obvious between the property lying between Fifth and Sixth streets and Broadway and Brook streets and a strip of property owned by the Union Depot Company that you are valuing in this Section 1, or by the Milwaukee Road on the river front, than there is between the tier of blocks from Third to Sixth street between Rosabel and Broadway and the railroad property next to the east of it which you are valuing? isn't that true?

A. Well, that is a pretty long question for me to carry through all together.

Question read.

Q. Do you get the purport of the question?

A. Well, I think I do. For railroad purposes, there is probably a greater similarity between the property between Broadway and Brook street and the river than there is to the property lying west of Broadway.

Q. Well, generally, as touching the matter of market value, what do you say about it? Without limiting it to railroad purposes, but touching the matter of market value I ask you the same question.

A. Well, in respect to the market value of the lands, as I say, I have let the Railroad Company establish those.

Q. Well, I ask you to forget that and give me your own judgment.

A. I can't.

Q. I want your judgment about it.

A. My judgment, as I have worked it out, I was perfectly willing to accept the judgment of the railroad companies as to the measure of value between that point and that, and between that and that.

Q. So I understand, but I want your judgment, Mr. Morgan, your own opinion, with respect to the market value. Is not the relation between the market value of the tract of land lying between Third street and Sixth street, between Rosabel and Broadway, as compared with that next, to the east of it, much more obvious than the relation between the market value of the strip from Broadway to Brook street between Fifth and Sixth stretes, as compared with the river front property of the Milwaukee road in that section?

A. Well, I say that that property is more valuable property; there is no question about that.

Q. I understand that. Now, just give attention to the question, see if I haven't made myself clear in that question, Mr. Morgan.

A. Did you use the words "market value" there?

Q. Yes.

A. That might be true if considered from the standpoint of market value.

Q. It is true, isn't it, beyond any question?

A. Yes.

Q. Mr. Morgan, isn't it hard, independent of what the railroads have done, and independent of this peculiar value by reason of railroad uses, to establish or conceive of any relation between the market value of the strip between Fifth and Sixth streets, Brook and Broadway, and this strip of the Union Depot Company's property in Section 1 that you are valuing?

isn't it very hard to see any relation whatever between those two tracts?

A. I think I stated, in my direct testimony, that there were some questions connected with this problem that were very difficult, and this is probably one of them; and for that very reason I saw fit to let the railroad companies themselves establish the relationship that existed between those various pieces of property, and when it comes to a detailed analysis of that relationship I can again show that the basis that I have established is more liberal than though I had taken the exact relationship which they have turned in.

Q. There is no use of again saying that, we have it all in print, and if we forget it we will look it up; but I want you to answer, if you can, the question that I asked you.

A. I did the best I knew how.

Q. Well, do you think there is any relation at all, as a matter of fact, between the market value of this strip between Fifth and Sixth streets and Brook and Broadway and the property on the Mississippi river front?

A. There must be; there must be a relation. If there is not a relation, Mr. Butler, how in the world would the railroad companies themselves have established any relationship between that point and that? Now, they have measured that.

Q. If you attribute to them infallibility, there cannot be, but did it ever occur to you that they might be wrong about some of these questions?

A. Well, Mr. Butler, there must be a relation between everything, mustn't there, some sort of a relation?

Q. Is there any more of a relation between the property that I have mentioned between Fifth street and Sixth street and Brook and Broadway and a like area in Section 1, on the river front, than there is between any other two tracts of property equidistant in the city of St. Paul?

A. Well, I should think that there is a relationship there

that is pretty firmly established, from the fact that it is all given over to transportation purposes.

Q. But all over the town, within three or four or five blocks, you can find land that is just as susceptible of railroad uses as the railroad land four or five blocks away, can't you?

A. Yes.

Q. And still you testified, to Mr. O'Brien, that the value changes very rapidly in short distances in this town?

A. Yes, it does.

Q. Well, now, doesn't it change just as rapidly in this particular locality from the river northerly as it does any place in town?

A. Well, as I say, Mr. Butler, that is a very difficult problem to handle, and I let the railroad companies establish that relationship. Now, they ought to be satisfied with the relationship that they themselves have established. If that situation can be illustrated graphically, I would like to point that out graphically: taking the line through there from Sixth street to the river, this—

The MASTER: Near John street?

WITNESS: Yes, about John street—the black line on this chart shows the value, the railroad value, which has been turned in by the railroad companies in their several estimates. The hight point is the Union Depot property which Mr. Watson testified had been taken as the base for measuring the contiguous property. That Union Depot property is put in at $255,372 an acre. The next, as we pass to the north, is Great Northern property, which is put in at $198,738; the next as we pass, is the Wisconsin Central, which is put in at $188,289; the next is the Omaha property, which is put in at $174,000 per acre; the next is the Northern Pacific, which is put in at $177,724. Now, we find there a dip in the figure; that is, at the Omaha we find that their figure is less than the Northern Pacific's, although it lies to the north, and the general trend is downward

to the Northern Pacific. The reason for that is that the Omaha reduced the figures turned in. Now, the next is the Northern Pacific property, which is put in at a uniform price of $177,724 from Broadway to Sixth street. The line shown in black is the State's reproduction cost, lying between the Union Depot property and Sixth street, and shows a gradual reduction in value, which corresponds with the difference between the Union Depot and the Northern Pacific. Now, if I had applied to each individual intervening property owned by the respective roads between Sixth street and the Union Depot property, I would have produced the yellow line which is shown below my line of reproduction cost. The result is that all of the area which is hatched or shaded, in there, shows a value attached to that property over and above what I would have given it had I used the individual figures turned in by the railroad companies as a base. So that in that case I have used a liberal plan of getting at this, and it also discloses that that is from north to south, and it also discloses, from the testimony which I have already given, that, from east to west, my Union Depot figures show a liberal basis of making the valuation.

Q. Which line is the line that you have fixed?

A. It is the black line, or cost of reproduction, from the Northern Pacific property to the Union Depot property, and, relatively, from the Union Depot property to the river.

Q. The top line graphically illustrates the valuations turned in by Mr. Watson and his associates?

A. Yes, turned in to the State by the railroad companies.

Q. And you have taken the relation of values that they have turned in as your basis?

A. The relation of values between the Union Depot property and the Northern Pacific property, beginning at Sixth street.

Q. Well, if you have said that they were relatively right (that is, the relation or the rate of percentage of difference between one part and the other part of this great railroad yard

in Section 1 was right) how can it be that your line does not show the same ups and downs, though differing in degree, that theirs does?

A. My line—if I had used the exact line, Mr. Butler, it does show the exact ups and downs.

Q. Yes, I know.

A. That is, if you take their line here off from this plat and put it on to that line, you will find that it corresponds exactly with the lower or the yellow line of that graphic chart.

Q. I understood you to tell us that you took the relation expressed by the railroad companies' appraisers and which is indicated graphically upon this little chart here by the line marked "Railroad reproduction cost" as being right.

Mr. O'BRIEN: I think he said he took the Union Depot, the ratio.

Q. Didn't you, the other day, tell us that you assumed the ratio of difference between the track owned by the Milwaukee, the Union Depot, the Great Northern, the Wisconsin Central, the Omaha and Northern Pacific as right; that is, the relation of one to the other as right? Didn't you tell us that the other day?

A. Well, I didn't intend to say that, Mr. Butler, because I knew, all along, that my line of increase would not correspond with the line of increase shown by the railroad companies, because I had taken the more liberal basis of getting at that and raised all of these values through here.

Q. Very well, if you didn't intend to so tell us, we will consider that you did not so tell us—

A. Well, of course, I know this—

Q. —because I am speaking from memory.

A. The Union Depot property and Northern Pacific property were my base.

Q. Now, you did assume, then, that the relation between the Union Depot Company's valuation, as made by the appraisers, and the Northern Pacific Company's valuation as

made by the appraisers, was right?

A. Yes.

Q. But the relation of difference between the Omaha's valuation, the Great Northern's valuation, the Wisconsin Central's valuation, and the Union Depot Company's valuation, all as made by the appraisers, you determined not to be right, did you?

A. No, I didn't determine it not to be right.

Q. Well, then, in your figures, your graphic line shows that they are not right?

A. It shows that while they might be right, Mr. Butler, I have allowed a benefit in there, on the ground of liberality more than anything else.

Q. You ignored that?

A. No, I didn't ignore that. I knew just exactly what that process was going to produce.

Q. Now, you see the line of the State's reproduction cost, the third line from the top, is a straight line with but one break, which lowers quite sharply as you approach the river, after you cross the Union Depot Company's property?

A. Yes.

Q. Now, your justification for this valuation is the relation made by the railroads themselves by these appraisers, isn't it?

A. It is.

Q. Now, their line (their valuation) is indicated by your top line?

A. A broken line of four separate parts.

Q. Now, then, does it not follow, Mr. Morgan, that you have arbitrarily assumed that the relation in one instance (that is, the Union Depot compared with Northern Pacific), is right, but Union Depot compared with anything else on the map is not right?

A. No, not necessarily, at all.

Q. Unless you justify it by saying you were liberal and gave somebody more than they claimed?

A. I just simply put that line on there because if there was any fault with it the fault would inure to the benefit of the Railroad Company.

Q. Now, is it your own judgment, independent of what the railroad companies have done, that the ratio of decrease as you approach the Mississippi river in Section 1, after crossing the Union Depot Company's property, was fairly stated by the appraisers?

A. Yes, I do.

Q. What do you say of your own?

A. It fairly stated—

Q. They are not the same—

A. Practically the same.

Q. —are they?

A. The difference is in the base, that is all.

Q. From the crest or highest point to the river, what is the decline in the State's reproduction line, in units, on your map?

A. From $141,000 to $115,000.

Q. On yours?

A. No, that is the State's reproduction.

Q. And yours, what is the fall from the crest to the lowest point there?

Mr. O'BRIEN: He says that is his.

WITNESS: That is mine.

Q. What is theirs?

A. $255,000 to $201,000.

Q. What is the difference in units?

A. About seventeen per cent.

Q. Then your determination indicates that their rate or amount of decline is seventeen per cent wrong from the crest to the river?

A. Not necessarily wrong, Mr. Butler.

Q. Well, it is different from yours?

A. It is slightly different, and that is due to a different base.

Q. Yes, that is what I say. You make seventeen per cent difference, then, in the rate of decline, don't you?

A. Yes.

Q. But you assume that the relation between the high point in the Union Depot yard and the low point in the Northern Pacific yard is the same?

A. Yes.

Q. But in a much less width, a width of about one-tenth as much, you vary from the railroads' appraisal seventeen per cent, don't you, in the other direction?

A. No, no. No, you haven't that right. The difference between the Union Depot property and the Milwaukee property is seventeen per cent. Now, my rate of change is seventeen per cent, also. The property of the Milwaukee Company was appraised by the same men, who put a less value on it, and I can see why they did, and I think it was perfectly right that they should.

Q. I think perhaps my questions heretofore haven't been understood as I intended to have them, and the fault is undoubtedly with me; but on this graphic chart, on the railroads' reproduction cost line, the decline from Union Depot Company's property to the river is indicated by twelve units of measurement on your map, isn't it?

A. Yes.

Q. Now, on the State's reproduction cost line, the third from the top, the same thing is indicated by six units of measurement on the map, is it not?

A. Correct.

Q. Then the railroads' appraisal declined the price of land from the Union Depot Company's land to the Mississippi river faster than yours did?

A. It would appear so, graphically, upon the chart, but if you take the percentage of difference between the value of the Union Depot property and that of the Milwaukee property, as turned in by the railroad companies, it would be about seven-

teen per cent. If you take the percentage of difference between our value (which is $141,000) on the Union Depot property and $115,000 on the Milwaukee property, it will show, also, seventeen per cent. The difference graphically is due to the fact that there is a lower base used by mine, and therefore the number of squares which would be shown would not be relatively as great.

Q. Then this graphic chart misled me, because I didn't understand the thing. But it is true, isn't it, that it is not misleading in this: when I say that your valuation, reproduction cost, as compared with the railroads' reproduction cost, disregards all fluctuations except one, that is, the elevations for the Union Depot throat of the yard?

A. Yes, that is true. As I say, it goes to the benefit of the railroad companies. That was disregarded. I took the highest figure that had been turned in by the railroad companies, and took that as a base, and let all the other companies benefit by that high price.

Q. That is, by the relation?

A. Yes, by the relation.

Q. But you score it down low enough so that you lower the price or cost or market value of every railroad company that returned, didn't you?

A. Yes, that is true.

Q. You didn't raise any of the values?

A. That is true. I was as much entitled to my base or point of beginning as the railroad companies were to theirs.

Q. So that, if you got the base low enough, and with all that relation, you could very generously rub out inequality and still keep, if you wanted to, at half the value of that turned in by the railroads?

A. Why, I suppose, Mr. Butler, if anybody was disposed to do that they might,—

Q. That is what you did, isn't it?

A. —but that wasn't my disposition.

Q. That is what you did, you lowered your basis, so that, no matter how much you would elevate any particular road, like the Omaha or Wisconsin Central, you were still below the figure they claimed?

A. Well, I don't think it is at all surprising that I was below the figures turned in.

Q. I am not asking about the surprise part of it, I am asking for the fact. That is the fact, isn't it, that you lowered the figure of every one of them?

A. Yes, it lowers the figures of all the roads on the section.

Q. And this, hatched across your graphic chart, is in the line of generosity, but not an absolute one, because it all results in cutting down the values of all the companies just the same, isn't that true?

A. Well now, wait a minute: the fact I did that might not have changed my base; if I had wanted to thin it down to the closest notch, I would have followed the exact line that was produced by the railroad companies, but I didn't desire to do that, and therefore that application doesn't necessarily apply.

Mr. BUTLER: Complainant's Ex. 68—Morgan is introduced in evidence, being Mayor's special message to the common council, as touching upon the value of the percentage of relation between assessed value and true value.

I want to offer in evidence, as a part of this cross-examination, certain portions of the report of the tax commission; it was upon their work that this percentage of relations was based, to some extent, at least. From page 7, the following (I will read it into the record), under the caption of Basis of Assessment:

"In Minnesota for nearly fifty years the mere caprice of the assessor, in which he has been sustained by the boards of review and equalisation, has been substituted for the rule of the statute. The result has been what might have been expected, an assessment varying from twenty per cent to sixty-five per cent of the actual value of real estate and an even

larger variation in the case of personal property." (From the same paragraph on page 8). "Where there is departure from the statute, no definite percentage has been selected and adhered to, so a variation great and far reaching has been introduced in the assessments throughout the state."

On page 8, in the paragraph under caption Assessment Policies of County Boards:

"Departure from the law regulating assessments forces county boards to adopt something in its place which comes in time to have the dignity of an assessment policy. In new districts where lands are owned by speculative holders, the actual settlers develop a tax system of distributive justice. By agreement of the local boards land throughout the county is assessed at a flat rate per acre. The uncultivated lands distant from railroads, and therefore of less actual value, in consequence bear a larger share of the tax than the lands that are improved, but the object of the flat rate assessment is secured, both in placing the heavier burden upon the speculative land holdings and in relieving the assessor from the necessity of a personal inspection of lands in undeveloped and unorganized townships."

At page 53, under the caption, Variations in Assessment:

"The inequalities in the assessment of real estate belong to five distinct groups:

"1. Inequalities existing between districts.

"2. Inequalities between rural and city property.

"3. Difference between assessments of lands and improvements.

"4. Variances in assessment between improved lands and wild lands.

"5. Inequalities between individual parcels of land."

On the same page, under the second subdivision, Inequalities Between Rural and City Property, the following:

"The values assessed against property in the cities have, as a usual thing, been higher than those assessed in the country. Four reasons exist for this state of affairs: one, because the cities, needing large sums of money, raise the valuation to increase the revenue; a second, because it is impossible to apply an average for land or for much of the personal property belonging to citizens living in municipalities; the assessor is forced to view the property and in consequence his valuation is pretty sure to be higher than the average arrived at in the country."

From page 28, the third subdivision, Difference Between Assessments of Land and Improvements, as follows:

"A custom has been developed in the state of assessing lands and improvements at different percentages of actual value. Especially is this true in the newer parts of the state. The argument has been made that a heavy assessment is a fine on improvements. Improvement should be encouraged, but it is against the law to assess land on one basis and improvements on another. Such action increases the inequalities between districts. * * * * * Here again a policy has been worked into the assessment system because of a desire to favor certain types of property on the ground that a rough justice requires such an adjustment, but the outcome is inequality and violation not only of the full value clause of the law, which is not enforced, but of the other requirement epitomized in the phrase 'uniform and equal.'"

Also from the paragraph commencing on page 28, which is entitled Variances in Assessment Between Improved and Wild Lands, the following:

"It has been customary in some of the counties to assess wild land at so much per acre regardless of its location or availability as agricultural land. In consequence, acreage twenty miles from the railroad is assessed at the same figure

as land much nearer and relatively more valuable. The object in the flat assessment is to avoid the necessity of inspection by an assessor—the expense of such labor would fall on the county in unorganized townships—and to shift the burden of the tax upon the land held by the speculators. In the opinion of the actual settler the speculator retards rather than builds up the country, since he puts no labor and very little capital into improvements. Tested by values, injustice and inequality result, but the object sought has been obtained."

And the paragraph commencing on page 57, which is entitled Inequalities Between Individual Parcels of Land:

"The discussion of inequalities between individual parcels of land resolves itself into the consideration of the shortcomings of local assessors. In different parts of the state great variances will be found in the assessments, running from 5 per cent of true value to 300 per cent. This discrepancy has been known to occur in the same addition in a town or village. Such a condition in the real estate assessment may be attributed to carelessness, to failure to use maps in the valuing and comparison of properties, to mere guess-work, and to the copying of old assessment rolls from year to year. When spread over an addition or assessment district, the percentages for the averaged assessments are somewhat less: as, in Duluth 15.66 per cent for Stewart's Addition to West Duluth to 70.49 per cent for London Park Altered Plat; in Minneapolis, 9.14 per cent for Rutland's Lake Harriet Addition to 104 per cent for Ankeny, Robinson & Pettitt's Addition, in the fifth ward; and, in St. Paul, 22.9 per cent for Hewitt's Outlots, First Division, eleventh ward, to 214.8 per cent for Cole's Rearrangement, in the fifth ward. These extremes are greatly modified when the ratios of the entire wards are taken showing sales and total assessments against them. These facts are shown in the following table:

COMPARISON OF ASSESSMENTS

FOR DULUTH, MINNEAPOLIS AND ST. PAUL.

	Duluth,	Minneapolis,	St. Paul.
First Ward	*	59.2%	52.5%
Second	*	53.4	58.6
Third	*	53.4	62.5
Fourth	*	58.0	60.2
Fifth	*	59.0	63.6
Sixth	*	50.5	60.4
Seventh	*	50.1	57.3
Eighth	*	53.7	55.8
Ninth	*	56.2	64.8
Tenth	*	50.3	44.4
Eleventh	*	55.1	48.6
Twelfth	*	45.2	50.9
Thirteenth	*	45.9	**
City	44.4	53.6	57.5

* Duluth is not assessed on a ward basis.

** Only twelve wards in St. Paul.

"The average percentages for the cities show a variation in assessment that is almost intolerable, but the conditions back of the city averages indicate variations between wards and behind the ward figures that tell a story of gross injustice as between individuals. An actual reassessment has not been made in Duluth since 1892, or in St. Paul since 1896. The assessing officers have copied the rolls from year to year, adding only the improvements and new property coming into use. Inequality has thus been intensified and an assessment originally fair made absolutely unjust as between individual owners of real estate. Throughout the state wherever the old rolls have been copied from year to year, the same injustice has been perpetuated and established between property holders. The sole explanation for the toleration of tax-payers under these conditions is to be found in the owner's lack of knowledge as to the real facts."

And further, beginning on page 58, the paragraph entitled St. Paul Assessment:

"In the city of St. Paul a demand was made for a new assessment, but the assessor's office, under the plea of no funds, failed to do anything more than had been done in past years. Thus the assessment, recopied from the rolls of two years ago, was again made the basis of the tax levy. Against this some protest was made. A letter to the city council from the Mayor, Hon. Daniel Lawler, set forth the facts and called for the appointment of a commission to investigate the situation. Such a commission was appointed and began the investigation by asking the state tax commission for a conference. The outcome of the conference was the adoption of a motion on the part of the St. Paul commission to appoint a committee of three to draw up a plan of procedure. The subcommittee recommended that the city council be advised to ask the State Commission to undertake the work of making a new assessment."

Q. Mr. Morgan, have you recently in any condemnation case, attempted to apply this theory of valuation of yours to see how it works getting new right-of-way?

A. Well, I gave some testimony recently in the case of the St. Paul Bridge & Terminal Railway Company against the owners of property lying down below Dayton's Bluff.

Q. And was your testimony on the subject of value?

A. It was.

Q. Both the market value (or true value) and the railroad value?

A. Yes.

Q. Was it the application, in its purity, of your theory that you have proceeded upon in valuing these terminals?

A. Yes, I applied the theory there.

Q. How much land was involved, roughly speaking?

A. I think some thirty-six acres.

Q. And your estimate of the railroad right-of-way value was what, in the aggregate, according to your scheme of valuation?

A. As I recall, it was somewhere in the neighborhood of $12,000.

Q. Was it as high as that?

A. That is my recollection of it. I haven't the figures now. $10,000 or $12,000, somewhere along there.

Q. What was the award of the commissioners?

A. I think the award was about $41,000 for the property.

Q. There was other testimony, heard in the old conventional way, of taking the opinions of men familiar with market value?

A. Yes, and opinions were offered there that were considerably less than the figure that I turned in, and there were opinions offered that were considerably more.

Q. Great variation in opinion about it?

A. Well, I don't think that there was any just ground for a great difference of opinion there. The men that testified against the St. Paul Bridge & Terminal Railway Company were those who made up the values for the railroads in the city of St. Paul; one member sat on the commission.

Q. Only those?

A. Principally those,—Mr. Elwood and Mr. Watson. There were others that testified, I don't recall who they were now, but I know that all of those who were connected with getting up the valuation of the railroads of St. Paul were interested in it.

Q. So the situation was sort of reversed; the property owners there were wicked enough to take the Railroad's opinion, and the Railroad was bad enough to take the State's opinion, but, as a practical matter, the State's theory didn't work any better than about one to four in that case, did it?

A. I think I stated in my testimony that there were cases where the valuation ran five or six or seven or eight or nine or

ten times what the normal value of the property is; that has been in my testimony, I think, (in my direct testimony) several times, that you find individual cases where that condition prevails. Now, this happens to be one of those cases. I am entirely satisfied that my estimate in respect to that property down there was a fair one. It is all that the property ought to be worth to the owners of it; and the fact that they have been successful in making the railroad company pay more doesn't increase the virtue of it.

Q. Are you aware that the property owners in that case are appealing, have appealed, or about to, from that award, as being discontented with it?

A. I understand that the railroad company is going to appeal from the award.

Q. Well, I am employed by the property owners to run the appeal, on the other side, so I know that they are going to appeal.

The MASTER: I understand you used the multiple?

WITNESS: Yes, I did.

Q. That is, your ten or twelve thousand dollars included the multiple, did it?

A. Yes.

Mr. O'BRIEN: We desire to note a motion to strike out all of the testimony with regard to the message of the Mayor, the report of the tax commission, and the doings of the commission for the condemnation of the property along the river bank, just referred to, the St. Paul Bridge & Terminal Company, as not being proper cross-examination, and entirely immaterial.

The MASTER: Motion noted.

RE-DIRECT EXAMINATION.

By Mr. O'BRIEN:

Q. The chairman of the commission which valued this property for condemnation to which your attention has been called, was Mr. W. C. Read?

A. He was one member of the commission, yes.

Mr. BUTLER: The others were Henry C. James and B. F. Beardsley, I think. I think Mr. James was the chairman.

Q. Mr. Read was one of the three gentlemen who appraised these railroad properties?

A. He was.

Q. And among the witnesses appearing upon behalf of the railroad owners were Mr. Watson and Mr. Taylor, who were Mr. Read's associates in the valuation of these terminal properties?

A. I am not sure that Mr Watson appeared, but Mr. Taylor did, and also Mr. Lester B. Elwood, who made up the valuation for the railroad companies in Minneapolis.

Q. The commission found the property to be worth about $1,000 per acre, or a little more?

A. About $1,200 per acre, I think.

Q. That property is immediately contiguous to the right-of-way of the Chicago, Milwaukee & St. Paul Railway Company going towards Hastings, is it not?

A. Yes.

Q. What was the value of the Chicago, Milwaukee & St. Paul property, as contained in its report to you?

A. Well, I think some of that property in the immediate vicinity of Dayton's Bluff was put in at $2,000 per acre, and then as you went south along the line of the Milwaukee there were places where it was put in at only $150 an acre. There is a good deal of property of the Milwaukee and of the Burlington, between Dayton's Bluff and Newport, that passes through platted lands, quite a good deal of high property (that is, I mean topographically high), and other property that is low. Now, some of that property was put in at a very low figure (as I say, $150 an acre), and the Burlington made no distinction at all, that is, they made no difference in the value of their property in the report to me, from the city limits clear

up to the Union Depot property, where they went to, that was put in at $1,750 an acre. Now, of course, it stands to reason that this property owned by the Burlington, in the vicinity of the union depot, is very valuable property and worth very much more than that, so that I think that their figure was an average figure; and yet, taking the average figure that they put in, my estimate on the cost of reproducing their property in St. Paul increases their figure very materially.

Q. There has been read into the record a portion of the report of the tax commission of the state of Minnesota, as well as a message to the common council from the mayor of the city of St. Paul, in which reference is made to the irregularity of valuations of real and personal property to be found in the city of St. Paul, and to be found, also, in the state of Minnesota. Now, I wish you would just go on and state what you have to say upon that subject, as to whether those conditions were taken into consideration by you in arriving at the values of properties in the state of Minnesota, used by railroad companies.

A. I haven't had an opportunity yet to read the report of the state tax commission in full, having only just received a copy of it. The investigations which I have made into the cost of reproducing the right-of-way of the railroad companies outside of the cities of St. Paul, Minneapolis and Duluth, do not take into account the assessed value of lands as a basis. In my testimony in the Northern Pacific case, I gave some data along those lines, which was, in general, corroborative of the values that we had obtained in respect to lands, but the values that we obtained were the actual sales of property, and I know of no better index of values than the actual cash consideration that is paid for lands. Therefore, whatever the tax commission has to say with respect to the relation between the assessed value and the sale-price of land outside of these cities, cannot, in any sense, apply to the valuation which I have placed upon

the right-of-way of the railroads of the state. When it comes—

Mr. BUTLER: That is, I understand, and have always understood, Mr. Morgan, that, in the country, outside of these three large cities, your scheme of valuation does not depend upon the established relation of assessed value to real value?

WITNESS: It does not depend upon it at all.

The MASTER: You simply used the sales-value, from time to time, to check up and see how it would run, occasionally?

WITNESS: I beg your pardon?

The MASTER: You simply used the sales-value, from time to time, to check up your other valuation, for the purpose of reference, or something of that kind?

WITNESS: This assessed value?

The MASTER: Yes, the assessed value.

WITNESS: The assessed value, just for the purpose of checking up, not depending upon it.

Mr. BUTLER: That is, in the country?

WITNESS: Yes. I took the actual sales of property in the country, and did not depend upon the assessment. Now, in the cities of St. Paul, Minneapolis and Duluth, I think my testimony shows, quite as clearly as the report of the state tax commission, that there are individual inequalities in the assessments, by districts or by sections, such as I have divided the railroad properties into, and that considering those sections individually it produces an inequality or a different individual condition than is obtained if we use an average ratio of assessment. However, when we have an opportunity to broaden the base, as we do by considering these properties in their entirety in these cities, the individual inequalities, of which the tax commission speaks, and of which I have spoken many times in my testimony, become inconsequential, they balance one way and another. Take, for example, the estimate of the Northern Pacific, taking the individual sections of the Northern Pacific and considering them as I was requested to do, and

then taking the sections throughout the city on a uniform basis, and we find only one per cent of difference. Now, then, I am prepared to show, in respect to the Minneapolis & St. Louis Railroad that, taking the individual sections and the sales in those sections and the ratio that those sales bear to the assessed value of the property, taking the Minneapolis & St. Louis property as a whole, it only makes a difference of two per cent, using it either way. Now, then, the main point in connection with this whole question is this: it doesn't make a particle of difference what the assessed value of property is, if you can measure that assessed value by what the property actually sells for, there is the index, it is the selling price, and the selling-price establishes the ratio; and, therefore, it is entirely immaterial what the assessed value is, so long as you are enabled to establish the ratio that exists between the assessed value and what the property actually sells for. And, as I say, there are individual inequalities, but when you are enabled to consider this problem on broad ground, those inequalities will equalize so that the element of error, the measure of error is comparatively small, and, I think, negligible.

Q. Mr. Morgan, if you had the assessed value of all of the property in the city of St. Paul and the selling price of all of that property, the question as to what the ratio would be between the assessed value and the selling price would be a mere mathematical computation, would it not?

A. Purely.

Q. It would be a deduction of fact from two other facts?

A. Purely.

Q. And in that respect there is nothing theoretical about it at all?

A. Not in the slightest.

Q. Now, when you come to ascertain the value of a particular tract of land by reason of the assessed value that has been placed upon it, and want to use any ratio, the value of

your work depends upon the method adopted by you for ascertaining the ratio, does it not?

A. Yes.

Q. That is, the size and fairness of the base used for the purpose of ascertaining the ratio?

A. Yes.

Q. Now, from the investigations which you made, as testified in your direct examination, from the investigations of the tax commission of the state of Minnesota, and from the investigation of the common council special committee, you determined that, generally in the city of St. Paul, the ratio between the assessed value and the actual value was sixty per cent?

A. Yes.

Q. And applied that ratio to all of the property of the Northern Pacific in the city of St. Paul?

A. Yes.

Q. And arrived at the value which you have given as the true value of the property?

A. I did.

Q. In the course of that work, you divided the property of the Northern Pacific into the different sections that you have described here?

A. Yes.

Q. And you checked the values as against the assessed value of contiguous property in each section?

A. Yes, in as many sections as we had sales in.

Mr. BUTLER: There were a dozen places in which there were no sales made, weren't there?

WITNESS: Yes, that was true, but the sections in which we did have sales exceeded more than eighty per cent of the total value of all property owned by the Northern Pacific in the city of St. Paul.

Mr. BUTLER: What per cent of area?

WITNESS: I don't know what per cent of area, but I am speaking of value now.

Q. Now, in that checking, you found that, in the different sections, the ratio of sixty per cent did not always prevail?

A. I did.

Q. You ascertained, then, in all of the sections where sales had been made, the value of the property, according to the particular ratio established in that section, did you?

A. Yes.

Q. And you added the aggregate values so found?

A. Yes.

Q. Now, will you please state again (although I think you have already stated) what per cent of difference there was between the aggregate values of the land, as found in that manner, according to the particular ratio established in each particular section, and the aggregate value as established upon the sixty-per-cent basis you have described?

A. Using the two processes, the individual sections and the individual ratios for each section, and the average ratio, considering all of the sections with the average ratio, the actual difference was 1.2 per cent.

Q. I call your attention to a tracing which, I believe, shows the Union Depot property by itself.

A. It is a map of the Union Depot property in the city of St. Paul.

Q. The property, I notice, is colored red, yellow and green.

A. Yes.

Q. Will you please state what those colors represent?

A. I have prepared this map to show the property which was actually bought by the St. Paul Union Depot Company, and the property which was acquired by them from the city of St. Paul, and also property which was acquired by the St. Paul Union Depot Company from the Chicago, Milwaukee & St. Paul. The property shaded red shows the original property

bought by the St. Paul Union Depot Company.

Q. From whom?

A. From the St. Paul, Minneapolis & Manitoba Railway Company, now the Great Northern. The property shaded yellow shows that which has been vacated, either a street or the public levee, for the benefit of the St. Paul Union Depot Company. The green shows the property which has been acquired by the St. Paul Union Depot Company from the Chicago, Milwaukee & St. Paul Railway Company. Now, according to the deed of transfer, all of the property shaded red, acquired by the Union Depot Company from the Manitoba, was purchased for $185,000.

Q. What is the area of that property?

A. The area of the platted lots amounts to 5.53 acres, and the area of the vacated streets and public alley amounts to 3.9 acres.

Q. Well, Mr. Morgan, do you mean that the area of the property shaded red and purchased from the St. Paul, Minneapolis & Manitoba Company, was the acreage you have given?

A. Yes.

Q. How much was that?

A. That was 5.5 acres.

Q. And the purchase price was $185,000?

A. The purchase price was $185,000, plus the cost of the south fourteen feet of lots 1, 2, 3, 4, 5 and 6, in block 3, which was for the purpose of establishing a public alley. After the acquirement of the original property, the conditions became so congested at the union depot that they did not have the facilities for taking care of the business and it was necessary to obtain more property, and the only available way by which that could be done was to move the Milwaukee road out into the river. The city of St. Paul agreed to vacate the levee outside of the red line shown between Sibley and Broadway, provided the Government would establish a harbor line, and an agree-

ment was made between the Milwaukee and the Union Depot Company for the giving over of the necessary property needed by the Union Depot Company—as to which the contract between the Milwaukee and the Union Depot Company is not available to me, but the property was deeded for "one dollar and other valuable considerations." The Union Depot Company also had to purchase a piece of property in here at the corner of Sibley and Second street, for the widening of that street, which has subsequently been carried out by the purchase of the piece of property at the corner of Sibley and Third. The Union Depot Company paid, I think, the expense attached to the Milwaukee of getting its tracks moved out to this point, and, as I say, the terms of the contract I have been unable to secure and do not know; but, of course, that necessarily becomes a part of the cost of acquiring that property. The Government, free of expense, established the harbor line and there were certain requirements by the city as to paving and as to sidewalking and protection work along the river, and the Union Depot Company did only a part of the filling up out to the harbor line established by the Government. The Milwaukee subsequently came along, as I understand, and finished that filling.

By Mr. BUTLER:

Q. Whereabouts?

A. That was down below, I think probably some place below Broadway, from there down to Brook street.

Q. But the filling that the Milwaukee Company did on its own account there, wasn't filling of any property that was opposite to property that it had conveyed to the Union Depot Company?

A. As I say, Mr. Butler, I haven't seen the contract.

Q. Well, I know, but here is the property, up here, that you tell us the Union Depot Company got from the Milwaukee?

A. No, no; that was deeded by the city. This blue is the

property deeded by the Milwaukee to the Union Depot Company.

By Mr. O'Brien:

Q. Have you got the total consideration paid for this other property that you spoke of?

A. I have not. They were given for one dollar consideration. All I have been able to find is a total expenditure of probably not to exceed $225,000, exclusive of the contract between the Milwaukee and the Union Depot Company.

Q. Well, now, let me see if I can exhibit this: The property colored red upon this map, from Sibley street out, was received from the St. Paul, Minneapolis & Manitoba Railway Company, and amounts to 3.5 acres, and was acquired by the Union Depot Company at an expense of $[illegible]?

A. That is the price in the deed.

Q. The property colored yellow upon this plat, including all of the streets vacated, amounts to 3.9 acres, and was deeded by the city of St. Paul?

A. Yes.

Q. The property colored green upon this plat, and which amounts to 3.95 acres, was received from the Chicago, Milwaukee & St. Paul Railway Company, in consideration of the performance by the Union Depot Company of the necessary work to fill the river bank out to the harbor line, so as to enable the intervening property to be used by the Milwaukee road?

A. That and other terms of the contract, which, of course,—

Q. Whatever other terms are in the contract.

A. Yes.

Q. And the property I have mentioned includes all of the real estate of the Union Depot Company with the exception of a portion of outside lots west of Sibley street, a small tract of land west of Sibley street?

A. Well, that was bought and deeded to the city.

Q. And a small tract of land along lot 3 deeded to the city for a public alley?

A. Yes.

RE-CROSS-EXAMINATION.

By Mr. BUTLER:

Q. Mr. Morgan, the Manitoba Company is a tenant of the Union Depot Company?

A. It is.

Q. What time was this deed made for $185,000?

A. Dated January 13, 1880.

Q. That was about the time of the organization of the Depot Company, wasn't it?

A. I think it was, yes.

Q. Do you know whether or not, as a part of that transaction, whether expressed in that deed or otherwise, the Manitoba Company reserved to itself and its successors, in perpetuity, the exclusive use of any of the property sold which the Union Depot Company agreed forever to maintain for its exclusive use?

A. I think that there were some provisions made in respect to certain tracks lying to the north.

Q. Of the most valuable property covered by that deed, the northerly portion inside of the Union Depot sheds and approaching thereto, for some tracks, either two or three,—do you know how many they had and enjoyed the exclusive use of there?

A. I don't recall now. My recollection is it was two, as I recall it, but I am not sure about that.

Q. Exclusively the property, as far as use is concerned, of the Manitoba Company?

A. Yes.

Q. There were nine tracks then, weren't there, in the whole yard, and the Manitoba Company had two exclusively?

A. Yes.

Q. The Manitoba Company has some main lines to Minneapolis?

A. Yes.

Q. And many of the stockholder companies in the Union Depot Company are tenants on the line?

A. Yes.

Q. Those contracts were made about the same time the Union Depot Company was organized, weren't they?

A. I presume that some of them were, yes.

Q. Well, you recall that as a matter of history?

A. Yes.

Q. And those are long leases?

A. Usually they are.

Q. And not terminable at the will of the lessee, are they?

A. Not necessarily so, no.

Q. Not at all so, are they? you would have to ask the lessor before they could be terminated?

A. Yes.

Q. And they run for about a century, don't they?

A. Ninety-nine years, I believe.

Q. Now, the property colored yellow here was, you say, the levee property of the city?

A. Yes.

Q. Before the enlargement of the Union Depot Company's property, which involved the shifting toward the river of the Milwaukee property, that portion was occupied, was it not, by freight houses and the works and loading tracks of the Milwaukee Road?

A. Yes.

Q. And had been for a great many years?

A. Yes, sir.

Q. And was, in effect, as far as the use and enjoyment of the property was concerned, (without going into the terms of the grant) on permission from the city to the Milwaukee Com-

pany, the property of the Milwaukee Company?

A. No, sir, it was not; they paid a rental to the city; and that was one of the terms by which the Union Depot Company took over the Milwaukee property, was that they should pay to the city the returns which the Milwaukee Company was to pay in to the city for rental of that property.

Q. The Milwaukee Company hadn't paid?

A. It had paid.

Q. But it claimed the right to continue there, and was there for many years?

A. Oh yes; of course that would be a question which I couldn't decide, I couldn't solve. The only purpose of this map is to show that a very large proportion of the area of the property owned by the Union Depot Company was given by the city of St. Paul.

Q. They had first given, according to some lease or other, the use of it to the Milwaukee Road?

A. Yes.

Q. And that had been so for a long, long time?

A. Yes.

Q. Forty years or such a matter, hadn't it?

A. Well, a very long time, I don't know how long.

Q. At any rate, the Milwaukee Road was in possession of the river front from Sibley street to Brook street?

A. Yes.

Q. And the line which you have indicated on this tracing here, which is now the line of the Union Depot Company, was then the line of the river?

A. Well, I couldn't say that it was altogether the line of the river; I think it was not, in fact; there were two harbor lines established.

Q. I mean the line of the improvement, which was the shore, which was as far as the property that the Milwaukee claimed at that time?

A. Well, I couldn't say as to that.

Q. Well, now, the fact is, isn't it, that there was, by this improvement and filling in of the river, probably more land made by the filling in of the river than the Milwaukee Company had occupied from Sibley to Brook street before that time?

A. Probably that is true.

Q. The Milwaukee Company had the riparian rights there except where the city had?

A. Yes, except the levee.

Q. And by the arrangement, whatever it was, between it and the city, it now occupies out to the river from Brook to Sibley street?

A. Yes.

Q. So those rights you would conceive to be of very great value, would you not, as the shore line existed before this improvement? The fact that they were able to make such land as that is, in front of land that they already owned you would say to be of exceeding great value, wouldn't you, Mr. Morgan?

A. Why, it certainly is a situation that would be valuable. Suppose, for example, that the Government of the United States had established definitely its harbor line along there (indicating) then it would not change the situation at all.

Q. The fact that it wasn't necessary to use that part of the river, and the government, either as a matter of grace or for its own purposes, permitted the filling into the river there, made the land then abutting on the river of very much more value than it would otherwise have been, than if there had been a private owner there? Do you agree with that?

A. Well, that might possibly be so, in some respects, it all depends upon circumstances whether land on the river is especially valuable.

Mr. O'BRIEN: Is it filled out and used now by the railroad companies to the harbor line?

WITNESS: It is filled out, I think, to the harbor line, but

all of the property is not utilized at the present time. That is shown on the map.

Q. Is this the harbor line here?

A. That is the harbor line established by the government.

Q. Now, then, including your valuation for the Milwaukee Company, do you include to that line?

A. Yes.

Q. At the same rate?

A. At the same rate.

Q. Now, the Union Depot Company, in order to enlarge its property there, a few years ago, at the time of this arrangement between it and the Milwaukee Company, filled in the land into the river that is now used by the Milwaukee Company, or most of it? Didn't they fill it all in, as a matter of fact?

A. Well, from what I was able to ascertain from the government engineers here, they did not. The Union Depot Company filled in to a harbor line, a tentative line which was established, and that tentative harbor line was coincident with the final harbor line that was established between Sibley street and Broadway, but between Broadway and the mouth of Phalen creek, the final harbor line was considerably outside of the tentative line that had been established for the purpose of permitting the Union Depot Company to fill out.

Q. You are not sure whether or not that was all filled at the expense of the Union Depot Company?

A. I am not sure as to that.

Q. Now, the Diamond Jo was at the foot of Sibley street, or opposite Sibley street and the block between Sibley and Jackson, on the river front, with its dock and freight houses?

A. Yes.

Q. That was also changed?

A. That was changed, all of those.

Q. All at the expense of the Union Depot Company?

A. All of the provisions which are provided for in the ordi-

nance of the city of St. Paul covering this vacation of the public levee, were a part of the duties to be performed by the Union Depot Company before the city would vacate the levee for their use.

Q. So that involved the filling in of the river and the moving towards the river of the docks and freight houses of the Diamond Jo?

A. Yes.

Q. And of the freight house of the Milwaukee Company and the dock back of it?

A. Yes.

Q. Is that true?

A. That is true.

Q. And it involved buying property on the west side of Sibley street?

A. That is correct.

Q. And giving it to the city in consideration of these concessions?

A. Yes.

Q. And it involved this alley between Wacouta and Rosabel that you have described?

A. Yes.

Q. Now, take this tracing map, and bearing in mind your theory, the lots between Broadway and Brook street between Fifth and Sixth streets, you have told us are the criteria of value subject to your percentage of modification?

A. That was my base.

Q. Yes, that was your base,—would present a situation where the application of your theory is not readily made, would it not? that is to say, there isn't any other place, is there, in this city where the problem of valuing a piece of railroad land is solved by taking some land so far away, and none of which is contiguous to the railroad property?

A. Of course, as I have stated, that this is a little differ-

ent; it is quite a different situation to contend with than is the case with almost any other property that you can pick out in the city of St. Paul.

Q. It is harder to apply your theory to it, isn't it, Mr. Morgan, than any place you ever saw,—in this city, we will say?

A. Well, I might say that it is probably the most difficult place to get what you might term conclusive results.

Q. Well, do you get conclusive results in any case?

A. Well, perhaps not entirely conclusive, but they are demonstrable, to my mind, better than any other means that I have been able to find to apply to this. Now, take this property between Broadway and Brook street, haven't I just as much right to assume that property as a base from which to operate as the men who made the valuation for the railroad companies have a right to begin there and measure relatively?

The MASTER: Meaning the Union Depot Company?

WITNESS: At the Union Depot property,—and measure, relatively, just as Mr. Watson said in his testimony?

Q. Well, that was a matter of opinion, wasn't it?

A. Yes.

Q. Their valuation on the whole a matter of opinion of each tract?

A. Yes.

Q. And you took their opinions as expressed and figured out a relation between them, didn't you?

A. Yes.

Q. Your valuation is not based on opinion at all, is it, you denounce opinion as not being a right way to solve this problem, don't you? Isn't that the truth?

A. Oh, no, I don't entirely discredit opinion evidence. I didn't intend to do that. I said that it is a different method.

Q. Well, now, I want to ask you, in view of this situation, (the difficulties of applying your theory,) whether or not this

is the most difficult problem you have had in this city.

A. I think it is.

Q. And the result is one, therefore, in which you would be obliged to say you do not have the average degree, or it is not entitled to the average degree of confidence that you have in your results generally in the city?

A. Well, perhaps that might be true, Mr. Butler, in a way, but I believe this: from such investigations as I have made of this problem generally, and from what has actually been paid for railroad property by the different railroad companies, that even though the process might not work out with the convenience that can be attached to it in other locations, yet it entirely satisfies my mind that it produces a result that is entirely fair.

Q. Yes, I know that you think it is fair; but now, Mr. Morgan, when you were last upon the stand, you told us that you undertook to include property in each section so that the non-railroad property therein was on the average equal in value, per unit of area, to the railroad property therein. Is that true?

A. Well, that is true so far as I could apply it, yes.

Q. Were there many instances where you did it arbitrarily?

A. Well, I couldn't say as to that; it would be a very difficult matter to consider.

Q. Now, did you not, in testifying before the commission in the condemnation case, in answering upon cross-examination there, say that—This question, "In classifying, did you endeavor to get property of the same class in the same district?" and did you not answer, "Taken arbitrarily"?

A. I don't recall. I don't recall, I am sure.

Q. Well, now, what I am trying to get at is this: whether or not you did endeavor to use your judgment and matter of opinion to get property on the average in each section, non-railroad, equaling in value the railroad property in the section to be valued, or whether the size of your sections is purely

arbitrary. Now, from looking at them, they are very irregular and variant in shape?

A. Yes, that is right.

Q. Now, I want to find out whether they are arbitrary in fact, whether the size of them is arbitrary in fact or whether or not it sifts down to your judgment that, on the average, the non-railroad property in each section is the equivalent in value of the railroad property in each section to be valued. Now, I would like to have that answered, if I can, definitely, so we will know forever how it is.

A. Well, the dividing up or the establishing of these sections was arbitrarily made; it is necessary that they should be arbitrarily made, I do not see how it would be possible to make them in any other way.

Q. What do you mean by "arbitrarily made" as you now use it?

A. "Arbitrarily made" means that they were made with reference,—you might say, longitudinally with reference to convenience in the work and transversely they were made with reference to taking in a sufficient amount of property to cover what might be termed sufficient area to give an index of the average value of land within it.

Q. Now, one question: It appears in the Northern Pacific work, the sections in St. Paul are about thirty, of which there were twelve or fourteen in which you found no sales at all to make the test?

A. Yes.

Q. Now, did you apply the sixty-per-cent relation in every section?

A. Yes.

Q. You used sixty all the time in this city?

A. Sixty all the time, as I recall it now.

Q. I misunderstood one of your answers to Mr. O'Brien, then, just now. Where you found sales in a section, you tried

to verify this relation price by sixty per cent?

A. As far as it would verify.

Q. As far as it would verify.

A. It verified pretty well.

Q. How many different percentages did you get? Give me the number of sections on the Northern Pacific where you verified it or attempted to or had the means to, and tell me how many different percentages you got.

A. Well, I think I furnished a statement in my direct testimony and gave that to you. That is in.

Q. You think that is in the record?

A. That is in the record.

By Mr. O'BRIEN:

Q. I understand that you used the ratio of sixty per cent in every section which you have made of the Northern Pacific property.

A. Yes.

Q. When you speak of verifying that sixty per cent, what do you mean?

A. I mean that the actual sales of property along the Northern Pacific railroad bore out the sixty per cent ratio which was established by the tax commission and by the special council commission.

Mr. BUTLER: In each section, or on the whole?

WITNESS: On the whole.

Q. You did find some sections in which the ratio between the selling price and the assessed value was very different from sixty per cent?

A. Yes, I did.

Q. Now, I understood you to say to me this morning that, in those sections, you made a computation upon the actual ratio found in that section.

A. I did.

Q. And you did that in every section?

A. I did.

Q. And the total values found from the aggregate, made up by the separate calculations that you have now described, brought you again within two per cent of the sixty per cent ratio?

A. Within 1.2 per cent.

Q. Within 1.2 per cent of the sixty per cent ratio?

A. Yes, sir.

Q. So when you say you applied that sixty per cent to every section, you mean you did that for the purpose of arriving at the value as a whole?

A. Yes.

Q. You then applied each section separately to the particular ratio which you found applied in the section, wherever you found sales?

A. I think you are getting that turned the other way.

Mr. BUTLER: He is getting it just as you have told him, Mr. Morgan.

WITNESS: The Northern Pacific railroad was divided into thirty-six sections.

Q. Yes.

A. I took sixty per cent and applied that to the assessed value of the property in each of the thirty-six sections, and produced my true value.

Q. Total sum?

A. Yes. Now, then, from that sixty per cent I raised it to the right-of-way value. Now, then, to prove that, I took the actual sales of property in all of the sections of the Northern Pacific where sales could be found.

The MASTER: That is, in the thirty-six sections?

WITNESS: Yes.

Q. Separately?

A. Where sales could be found, separately, and verified the sixty per cent which I used as a whole; and the actual sales in

these individual sections would vary in the ratio, but when the sales were considered as a whole they also brought out the sixty per cent average. Now, then, when I came to take actual property owned by the Northern Pacific in each of these sections and used the individual ratio that I found in each section, the result of those computations as a whole came out within 1.2 per cent of the amount of money ascertained by using the sixty per cent average.

Q. I don't know that I can restate that any more plainly. I was trying to state that in the same way. You find, for instance, in Section 1 of the Northern Pacific Road (and I am not attempting to give the exact figures for that section, it is simply to illustrate what I understand your testimony to be) that the ratio there between assessed value and sales-value might be 25?

A. Yes.

Q. You thereupon estimated the value of the property in Section 1 upon that basis?

A. I did.

Q. And so you did in each section where you could find sales; you added the aggregate values, so found by applying the particular ratio determined in each section, and the aggregate of the values so found was within 1.2 per cent of the aggregate value found by you by the application of the 60 per cent ratio to the entire property?

A. Exactly right.

Q. Now, you say that you valued the property of the Milwaukee Road to the harbor line as now established.

A. Yes.

Q. I want to know whether or not, in valuing the property of the Northern Pacific at Duluth, you pursued the same method and valued that land to the harbor line.

A. Yes, I did. And there is much of the property of the Northern Pacific Company in the city of Duluth, as well as

property belonging to the Duluth, Missabe & Northern, and, I think, to other lines in Duluth, that is covered by from six inches to six feet of water, and in each one of those cases the value of that property was put in at the same figure as that property which was above the water; recognizing the fact that that property is valuable for railroad purposes and giving them the value of it clear out to the limitation of their ownership.

Q. So that if the value attaching to the property because of riparian rights means the value that may come through using that property and filling it in to the harbor line, that entire value has been given in your "true value?"

A. It has.

By Mr. BUTLER:

Q. Thirty-six sections in the Northern Pacific?

A. Yes.

Q. In St. Paul?

A. That is my recollection.

Q. 60 per cent was used to determine the value of each section?

A. Yes.

Q. 60 per cent relation of assessed value to the true value?

A. Yes.

Q. About twenty-four sections had sales in them so that you could make tests?

A. Yes.

Q. Where you made those tests and found that it showed that that average was not applicable there, the average percentage of 60, you still used the 60?

A. I did.

Q. Which, of course, resulted in error as far as that individual section was concerned?

A. Yes. As I say, this has got to be considered; these properties had to be considered as a whole.

Q. I so understand you. Now, of course, many of the sales had improvements on them?

A. Some of them, yes.

Q. You didn't appraise any of the improvements to find out whether the relation of 50 per cent assessed valuation to true valuation of the improvements was right? Did you, as a rule, appraise the improvements?

A. No, I did not.

Q. And is it true, as stated in the Mayor's message, and as stated in the tax commission's report, that in this city the assessments are very spotted, [great inequalities between individuals]?

A. No question about it.

Q. Exceedingly so, is it not?

A. Yes, I think that is so.

Q. And the fact that it is spotted, and exceedingly so, in this city, makes more difficult the application of your theory?

A. No, I think not, Mr. Butler. We found that things equalized—

Q. Wait a minute. Do I understand, then, that your theory is such, Mr. Morgan, that if it were truly assessed and there were no inequalities between towns, that that wouldn't make your work any easier?

A. It might, Mr. Butler, make it easier, yes, but as I stated before, what difference does the assessed value of property make? It makes positively no difference of all to establish the selling price.

Q. Everybody knows that.

A. I want to make it perfectly clear to the Court.

Q. Yes, it is perfectly clear to the Court, and everybody else, but the relation is important, isn't it?

A. Well, we established the relation from the sales, certainly.

Q. Yes. Now, if this Division 1 here, the relation is 40, for example—

A. It isn't, however.

Q. No, we will say it isn't, but you are capable of assuming that it is, for the purpose of my question?

A. Yes.

Q. Assume that it is 40 in 1, 80 in 2, and 22 in 3; it is a very difficult matter then, is it not, having such a situation presented to you, to apply your theory? Your theory will not work, under such circumstances, unless corrected, taking into account the area in each section to be valued, will it?

A. I do not know as you would meet a condition exactly—

Q. I am not asking you whether you would meet it, Mr. Morgan, I am asking you to assume that you have met it, and then I am asking you whether or not your theory will work the truth.

A. Mr. Butler, we can produce conditions which will probably affect almost any theory that may be advanced.

Q. I know it, and I am producing one that will affect yours; see if you will admit that it will affect it.

A. Let us keep to the facts in the case rather than the theory.

Q. Can you answer my question?

The MASTER: Just assume the fact as he has stated it, and then answer the question.

A. Well, of course, there is no question but what that would require a different character of treatment. Where you have property very close or within close limitations that you find these inequalities in, why then, it would have to be considered more in detail than would be the case were those inequalities not present. So it is when we come to expand to the larger proposition of considering these railroads in this city as a whole, that those sections in which inequalities exist may be made larger, and that, as we expand to the limits of the city,

they work both ways, and equalize where you can consider long stretches of property; and I should say, where you find within close limitations, such a range as between assessed value and sale-price as Mr. Butler has indicated here, that it would require a much closer treatment than indicated by such sections as he has pointed out. But—

Q. Than you gave it—it would require closer treatment than you gave the problem, wouldn't it?

A. Not at all.

Q. Now, let us see. Let us assume that in some of these sections the relation is 22, as found by the tax commission and that, at points ten feet apart, until you get to 104; would that not, or would it, affect the verity of your results on the Northern Pacific?

A. I don't think that the inequalities—Of course, if you are going to assume that those inequalities exist right straight along, within ten feet of each other, all the length of the Northern Pacific, there is no telling how that would come out.

Q. No.

A. There is no telling how that would come out.

Q. That is, if the inequalities were as between tracts close together, and great inequalities, the application of your theory would be without value, wouldn't it?

A. Not at all, Mr. Butler, because if those inequalities were great—

Q. You said you couldn't tell how it would come out.

A. Not without figuring.

Q. Now, if it is true, as this commission reported (whose figures you have taken as to this relation) that you can sit on your own porch and peg a stone against your neighbor's house where there is the greatest conceivable difference in valuation, these tests, from a few sales in each district that you have examined, are not sufficient; isn't that true?

A. I am perfectly willing to admit that there are inequali-

ties, and as I have stated before, many times, we must get back to the fact, Mr. Butler, that where the element of error runs one way it also runs the other.

Q. That is it exactly.

A. Now then, we come to a general balance, and, taking that general balance by both processes, as I have done at your request, in this case, we find only one or two per cent difference.

Q. Now, Mr. Morgan, isn't it true that where you demonstrate a percentage relation different from 60 in one division and use 60, that that division is erroneous?

A. There is an element of error, as I have stated, certainly, right straight along on individual sections.

Q. So all are erroneous, then, except those that are found at 60?

A. That is probably true.

Q. And your theory is that one error will correct another?

A. They do.

Q. They do when you take into account the fantastic shapes of your divisions; isn't that true?

A. Well, I don't think they could be called fantastic. They haven't been made with that view.

Q. But they are arbitrary, for convenience in working?

A. For convenience in doing the work, yes.

Q. And are in almost every conceivable shape and relation with respect to location to the land to be valued, are they not?

A. No, I think not.

Q. Is there any regularity, either in the size or shapes of your sections and the areas of land?

A. There has been, so far as it was possible to divide them equally.

Q. I mean shapes. We know you did the best you could, but, as a matter of fact, if you would lay them all down before the Master, isn't it the most obvious thing, upon all of these

plats, the irregularity of your sections?

A. Well, a great deal of that irregularity would be eliminated were it possible to consider parts of lots, and it is only by reason of the fact that we had to consider an entire lot or an entire block that we couldn't make the lines exactly parallel.

Q. Now, is it overstating it to say that the shape and size of these sections are, compared one with the other, arbitrary and fantastic and variant; is that overstating it?

A. Oh, yes, I think it is, Mr. Butler. I don't think it is a fair statement.

Q. Do you think it is overstating it to say Section 3 on this map, as compared with Section 1, has no relation in size or shape; that Section 2 has none to either, or 4 has none to either, on this very map that you produce; isn't that true?

A. Don't those sections cover the property to be valued?

Q. They include it, yes, sir.

A. They do, that is the point.

Q. What amount of property, what distance from the property to be valued do you go in Section 1?

A. About a block.

Q. In Section 2?

A. About a block.

Q. From the Milwaukee property to Sixth street?

A. Oh, well, I am speaking now where we begin. The railroads have fixed that.

Q. You are not responsible for this one?

A. I am willing to concede the difference in value of the railroad companies near the Union Depot property.

Q. You are digressing. I ask you to tell how far from the property to be valued in Section 2 is your remotest part.

A. It is probably six or seven blocks, although all of the intervening property is railroad property.

Q. And in Section 3 how many blocks from the Union Depot property to be valued?

A. I should say about four blocks.

Q. And Section 4 how many?

A. Oh, probably three.

Q. And you don't even take the contiguous property in Section 2 at the east end of the section. Now, in other places and on other sections, you go over half a mile, don't you?

A. I don't know that we go as far as that, probably a quarter of a mile.

Q. A quarter to half a mile, depending on the circumstances. So isn't it true that, with respect to the length of right-of-way or yard used in each section, it is purely arbitrary and fantastic?

A. I have said that it was purely arbitrary so far as the sections were concerned for convenience in the work.

Q. Some of them are a mile or two miles long, and some of them a few feet?

A. No, not that.

Q. Well, how long is the longest on the Northern Pacific?

A. Oh, I don't think we have a section on the Northern Pacific that is over six or eight blocks long.

Q. Any as long as a mile?

A. No, I think not.

Q. Your typical section, (and, by the way, it is the one that you picked out to illustrate most perfectly your theory on the Milwaukee road from St. Clair to Selby,) is a mile, isn't it?

A. Well, possibly it is, along the Milwaukee.

Q. Some parts of that you get away nearly half a mile from the railroad, don't you, and other parts of that same section you were coincident with the right-of-way, weren't you, on that same section?

A. No, I think not, Mr. Butler.

Q. Practically so, are you not?

TORN PAGE

A. No, I don't think that we get away more than a quarter of a mile.

Q. In some places, and in other places your section limits are practically coincident with the right-of-way, are they not?

A. Very close, yes.

Q. Within a few feet?

A. Yes.

Q. When you compare such a section as that with this map, do you still decline to say that in size, length of the railroad lands to be valued, and the size and shape of the sections, your selection does not result in the most arbitrary and fantastic sizes and shapes?

A. The only word, Mr. Butler, that I object to in connection with answering that question is the use of the word "fantastic."

Q. Well, you will say the most arbitrary, then?

A. I shall not say the most arbitrary. I shall say that it is arbitrary.

Q. Very arbitrary you will say, won't you?

A. I shall say it was an arbitrary basis of getting at the value of property of the railroads; that is, so far as the sections are concerned. But so far as their being fantastic is concerned, I should think that the inference might be drawn, from the use of that word, that it is beyond what should be drawn.

By Mr. O'BRIEN:

Q. Will you please again describe the object and method adopted by you in fixing the boundaries of the different sections, whether or not it was either arbitrary or fantastic upon your part, or whether it was based upon the character of the contiguous property.

A. The basis for establishing the sections was made longitudinally for convenience in the work. It enabled the dividing of the property up in such a way that we could handle it, that we could proceed with the computations by different men and carrying it forward, so that was essentially the reason for the

longitudinal division of the properties. The transverse establishing of the sections was made up from what you might consider to be an arbitrary basis. We sought in each case to take in enough property to get a fair index of the value of property on both sides of the railroad, and, as far as the conditions would permit it, those sections were made up in such a way that the line of railway or the property of the railway to be valued would be as near the center of gravity of that area as could be conveniently established; that is, the center of gravity of area.

The MASTER: The center of gravity of area but not of value?

WITNESS: Yes.

By Mr. BUTLER:

Q. That is, you ignored all considerations of value on either side?

A. Yes.

Q. And the transverse measurements are purely arbitrary?

A. Yes.

Recess until 2 P. M.

AFTERNOON SESSION.

By Mr. O'BRIEN:

Q. Mr. Morgan, when you were testifying on cross-examination in one of these cases you spoke about the valuations given by the Minnesota Transfer Company.

A. I did.

Q. What were the valuations upon the real estate of the Minnesota Transfer Company, according to the original report of that company filed with you?

A. The property now owned by the Minnesota Transfer Railway Company was divided into two sections in the report submitted by them to the State; Section 1 comprised all of the property lying between the Chicago, Milwaukee & St. Paul on the south and the Great Northern on the north, and is used

almost exclusively for transfer business between the several roads, which are joint owners in the property; Section 2 comprised that part of the Minnesota Transfer Railway property lying north of the Great Northern and extending from there to Fridley Junction, on the Great Northern and Northern Pacific roads. That was the old Belt Line property. On Section 1, comprising 201.08 acres, the first valuation turned in was $502,687.50; on Section 2, 445.33 acres, $100,154; making a total of 646.41 acres, at a total reproduction cost of $602,841.50.

The second valuation which was turned in by the Minnesota Transfer Company, and which was made subsequent to my figures having become public through the Sundberg Senate committee, was for the same acreage in each section as follows: Section 1, $3,087,428.25; Section 2, $353,530.70, making a total of $3,440,958.95. My estimates on the cost of reproducing the property of the Minnesota Transfer Railway Company is, under Estimate B, Section 1, $440,260.64, Section 2, $54,054.56, making a total of $494,315.20; Estimate A, Section 1, $770,456.12, Section 2, $149,334.94, a total of $919,791.06. The Minnesota Transfer Company did not report any market value for the lands owned by them; the value they turned in was the railroad value, therefore we could make no comparison on an equal basis as between their market value and what constitutes my true value.

CROSS-EXAMINATION

By Mr. BUTLER:

Q. Was the first return made by the Transfer Company on the basis of the estimate of Watson and others, or was that before their estimate?

A. That was before, although Mr. Watson and Mr. Read and Mr. Taylor had made, I believe, the valuations for the other railroad companies prior to that time or about that time. I know they gave testimony in respect to their valuations be-

fore the Sundberg Senate committee.

Q. And the second valuation that you have given us of the Minnesota Transfer, aggregating $3,440,958.95, is the valuation made by this board?

A. I believe it is.

Q. Of Read and others?

A. Yes.

Q. That first valuation came to you over the signature of Mr. Dooley, superintendent of the works out there?

A. Yes.

Q. Now, with respect to that area, did you divide it into more than one section? You have given it by sections; did your sections correspond with their sections?

A. Yes, sir.

Q. Your Section 1 corresponded with their Section 1 and your Section 2 with their Section 2?

A. Yes, sir.

Q. Section 1 took in the great yard there?

A. Yes.

Q. And practically all of the interchange property, that is, the switching-yard property?

A. Yes.

Q. And the Belt line that you speak of is an old, independent property, that was used in connection with the transfer and stockyards at New Brighton?

A. Years ago, yes, and subsequently taken over by the Transfer Company and is now a part of their property.

The MASTER: In use?

WITNESS: In use, yes.

Q. So in applying your theory to this proposition up there, you included 201.08 acres in one section?

A. Yes.

Q. That begins where the Milwaukee road crosses Prior

avenue, where the old passenger depot was, the Midway station?

A. Yes.

Q. And extends northerly for a distance of about two miles?

A. About a mile and a half, I should say.

Q. To the Great Northern property?

A. Yes.

Q. And that runs into St. Anthony Park?

A. Yes.

Q. That yard connects with the Great Northern yard at St. Anthony Park?

A. That is correct.

Q. The general course of the Minnesota Transfer yard being north and south?

A. Yes.

Q. And the general course of the Great Northern yard being east and west, forming a kind of L adjoining or near the St. Anthony Park yard?

A. Yes.

Q. Of course, Mr. Morgan, you are of opinion that there is great difference in value per square foot or per acre of this yard, comparing one part of Section 1 with another part of Section 1?

A. No question about it.

Q. Did you apply your theory unqualifiedly to that problem out there?

A. I did, with the exception that the ratio for that particular assessment district was less than the average, and I used the ratio that applied to that particular section.

Q. You used a ratio of your own making out there, and not the 60 per cent ratio of assessed value to true value, didn't you?

A. I used the ratio of 56 and a fraction, I think.

Q. That you got at in your own way?

A. Yes, I verified that in my own way. That was the ratio

that was also established by the tax commission and by the special council commission.

Q. This district out there is a rapidly-growing district?

A. Yes.

Q. The last assessment made by public authority was in 1896, wasn't it?

A. According to the statement you made this morning, it was.

Q. Well, that is your understanding of the fact, too, isn't it?

A. Yes.

Q. And is it not true that the rate of increase in market value of lands has varied greatly in different parts of the city during the last twelve years?

A. Yes.

Q. And probably more greatly in the vicinity surrounding Minnesota Transfer than any place else.

A. Well, I think that that is probably so; there has been quite a development all around the Minnesota Transfer, but of recent years the development has been mainly to the west of the Minnesota Transfer, not necessarily property which is immediately contiguous to the Minnesota Transfer but still west of that.

Q. The policy of the Minnesota Transfer Company, with respect to the uses of its property out there, underwent a change some years ago, did it not, with respect to the question of whether or not that plant should be used to serve local industries and shippers, or whether it would be confined to the Transfer work between railroad companies? At first, is it not the fact that that company discouraged the development of industries there that required trackage, by refusing to extend their facilities to the warehouses contemplated and existing, and is it not also true that, within the last few years, four or five, maybe a little longer, that policy was changed by the board

of directors of that company to encourage local business, involving the construction now of a local freight station, one on each side of the yard, one west of the great yard and one east of the great yard?

A. Yes, I think that is probably so. Of course, there have been industries situated there for a good many years, and they have also had trackage facilities. The trackage facilities, however, have been paid for by those companies which had the warehouses there. That is, they had to pay—

Q. I was not intending to inquire into this matter with respect to the value of sidings or private tracks at all, but simply as to the general development of the district.

A. Well, as I state, there has been a development there.

Q. And the policy has changed in the way I have described, or substantially so, has it not, or do you know about that?

A. Well, I am not familiar enough with the history of the Minnesota Transfer Railway Company to be able to state definitely about that. I can say, however, that there has been quite a development within recent years in the line of warehouses and manufacturing plants and plants which need railway facilities for their most successful conduct.

Q. In other words, the district is becoming a manufacturing and shipping center?

A. It is.

Q. Quite rapidly, is it not?

A. It appears to be, particularly on the west.

Q. And recent developments indicate important and large improvements on the east and north of University avenue?

A. Well, of course that is a natural distributing point for the Twin Cities and the probability is that the development will go on on both the east and west sides of their property.

Q. How many acres of land did you include in the non-railroad lands in Section 1?

A. I took 314 acres of land.

Q. In the Section 1 to value 201.08 acres?

A. Yes.

Q. Did you take a like amount on both sides of the property?

A. As near as it could be done.

Q. In area?

A. Yes.

Q. That included, I suppose, some residence districts?

A. Yes, it did.

Q. How far, on the average, on the west, did your westerly section boundary extend from the westerly boundary of the railroad yard?

A. I should say probably the average would be between an eighth and a quarter of a mile all around the Minnesota Transfer.

Q. That included residence districts?

A. Yes, it included whatever class of property came within the area, thus enlarging the—

Q. And it included a good deal of property not at all suitable for residence purposes?

A. Yes, that is true.

Q. It did not extend far enough away to include any of the educational institutions?

A. No.

Q. But did include such little business places as there are along University avenue, for example?

A. Yes.

Q. What was the width of your section where it crossed University avenue?

A. I think it is somewhere between 1,600 and 1,700 feet, judging of it by the length of that viaduct.

Q. That would be a narrow width for it, wouldn't it? It would be narrower than the average? The yard itself north of University avenue is how wide? Immediately north of Uni-

versity avenue, well, say eighty rods north of University avenue.

A. Well, I think the width, Mr. Butler, from the Milwaukee road through to probably eighty rods or more north of University avenue, would be substantially the same, that the property lies along parallel lines, it is a parallelogram all except at the extreme north end.

Q. About how wide from long side to long side, the altitude of your parallelogram?

A. I should say probably 1,600 feet.

Q. And how wide was your section on University avenue?

A. Well, about the same length. That is, I am speaking now of the property owned by the Minnesota Transfer.

Q. Yes, so am I, but your section included, all together, 600 odd acres, that were non-railroad lands, as I get it, and 200 acres that were railroad lands, as I get it; that would be 800 acres?

A. Yes.

Q. Now, the railroad lands are intersected by University avenue, and the length of University avenue through the lands of the railroad company is 1,600 feet. Now, I want to get your statement as to the width of your section at University avenue.

A. I haven't that map with me. If I had the map of Minnesota Transfer here, I could tell just exactly what the width of that section is at that point.

Q. Was it three times as wide as—

A. Oh, no, it was not; probably the width of our section was not to exceed half a mile, perhaps a little more than that.

Q. That would be about 2,600 feet?

A. Yes.

Q. That is, following University avenue through your section, you would have 1,600 feet of railroad land and about a thousand feet of non-railroad land, some on each side of the railroad land?

A. Yes, I think that is about right.

Q. So at that point your section must have been narrowed down somewhat, because there ought to be as much on each side of the railroad land, to have symmetry, as the size of the railroad land itself? If there were 400 acres and there were about as much on one side as there was on the other, to be symmetrical you would have to have about 4,800 feet along University avenue, wouldn't you?

A. No, I think not as much as that. Possibly the best way would be to get the map of Minnesota Transfer here.

Q. Yes, I think it would be. Well, I will pass from that, then, if you can send for it; perhaps I can go to other branches of the examination and take that up later when we see the map and then we will not fall into inaccuracy by fault of memory.

A. Yes, I would rather have the map to work on.

Q. I suppose that the sales that you found in this section varied in size, that the individual sales differed in size?

A. Yes.

Q. What would be the rate—from one lot to an acre?

A. Probably that.

Q. Do you consider that it is true that a large railroad yard like that, containing 200 acres of land in one tract, free from surface street intersections, is enhanced in value at all, expressed in units of area, by the fact that it is a large tract and shaped as it is shaped,—in a very suitable shape, as I take it, to be used for railroad purposes?

A. That might be true, considered from the standpoint of value, but I have been considering this from the standpoint of reproduction cost.

Q. Yes, I understand the difference, but let us consider it merely from the standpoint of market value. The fact that it is a large tract, situated as it is, makes each part of it more valuable, does it not?

A. Yes, I think that is probably so from the standpoint of value.

Q. Your Estimate A, reproduction cost, would make a value of about $4,500 an acre?

A. No.

Q. I am now speaking of Section 1.

A. It amounts to about $3,800 an acre.

Q. Did you take into account the .4 of an acre that was acquired, about the time of your valuation, from the Robbins estate, by this company for a part of its yard?

A. No; that particular piece of property that was acquired from the Robbins estate was not taken into account because it had not been condemned, nor had the damages been awarded, up to the time that this valuation had been made; and, even though it had, I should not have taken that into account as being a fair index of the value of the Minnesota Transfer property, considered as a whole and in the way that we have considered it. I am perfectly willing to concede that there are individual pieces of property connected with the Minnesota Transfer, perhaps adjacent to University avenue, that are very valuable, but in considering the 201 acres it was impossible for me to subdivide that, and I believe it would be impossible for anyone to subdivide it, in such a way as to take into account the special conditions which might apply to some particular point.

Q. That is, some of it you think worth more than the rest of it?

A. I do.

Q. The most valuable you judge to be, I suppose, along University avenue?

A. Well, I think that that would be the most valuable from the standpoint of its availability for manufacturing plants that distribute.

Q. And its market value?

A. Yes, that is true.

Q. What would be the relation of that to the rest, in your judgment?

A. I don't know.

Q. Twice as valuable?

A. I couldn't say. I have made no figures on that basis at all.

Q. But will you have any opinion from your examination? Suppose it was all as valuable as the most valuable portion of it which is next to University avenue, would you think that would double your figures?

A. Well, I shouldn't want to make an offhand guess, because I have considered the property in an entirely different light, I have considered it in its entirety rather than individually, and I should not want to say what the relative value of property would be in the immediate vicinity of University avenue without an opportunity to make some investigations.

Q. How many sections were made of it by Watson and his associates?

A. I do not know.

Q. You never have seen that?

A. I believe, however, in their report they did turn in—

Q. They turned in that report to you, didn't they?

A. No, we received the report from the Minnesota Transfer direct.

Q. I know, but you got the Watson report, didn't you?

A. I didn't see the Watson report, no. I think that they did turn in property in the vicinity of University avenue at forty cents a square foot. That is my recollection.

Q. And other property at less?

A. Yes, some of it, I believe, I believe, as low as five cents.

Q. Not in the yard, not in your Section 1?

A. No, I guess twenty cents was perhaps the lowest.

Q. Now, you understood that it cost this Company here $13,000 to add .4 of an acre to its yard at University avenue

in the Robbins condemnation case?

A. Something like that, yes.

Q. And your value on the whole is $3,000 an acre?

A. $3,800.

Q. But your idea is that that land added was very much more valuable than the average of all?

A. Oh, there isn't any question about that.

Q. Now, in the Union Depot problem, which extended from Sibley street to Brook street—less than half a mile, as I recall it,— you subdivided into three sections?

A. Yes.

Q. But in the Minnesota Transfer property, which extended a mile and a half and was a quarter of a mile wide, or such a matter, you regarded that as one section?

A. Yes—I could get at the Minnesota Transfer property all around.

Q. Does not the development of the Minnesota Transfer property and the use of that yard for warehouses and trackage purposes, etc., have a strong tendency to depreciate the value of lots which are suitable principally for residence purposes?

A. Well, I hardly think that it does to a great extent. It undoubtedly does very close to the Minnesota Transfer, but our section was wide enough to take in property that would not be affected. Of course, that might affect it, as a whole, to a certain extent, but I don't think that that could be measured—

Q. Taking your conception, which is the underlying one for this reproduction cost, of removing the railroad from the property on which it is located, are you not of opinion that the property in your section about this Transfer, which now is close to the yards, would be, for residence purposes, enhanced in value if the railroad were not there at all?

A. Well, some of it might.

Q. Don't you think all of the residence property, the prop-

erty principally valuable for residence purposes, by reason of its size or shape, would be greatly enhanced in value if the railroad yard were not there, for residence purposes?

A. It might; it probably would enhance the value of property for residence purposes.

Q. Very greatly, wouldn't it?

A. Well, as I say, I don't believe that it could be measured exactly.

Q. No, I don't either, but it would be very greatly, very considerably, wouldn't it?

A. Well, I wouldn't want to say that.

Q. Would you say only slightly?

A. Well, I wouldn't want to say how much, whether it is slight or great. I say that I don't think it can be measured. I am perfectly willing to say that it would probably make a difference. Now, how much I don't know.

Q. In other words, Mr. Morgan, there were included in your section non-railroad lands, a good many tracts of land, which were in fact used for residence purposes, and a good many other tracts whose practical value, by reason of the shape and location and streets and the like, was residence purposes?

A. Yes.

Q. Isn't that true?

A. Yes.

Q. Now, you say that it is utterly impossible to determine, do you not, Mr. Morgan, what the value of such residence lands would be if the railroad were not there, but you do know that the tendency of the presence of a railroad is to depreciate value; isn't that right?

A. Well, I think that in some respects the tendency of a railroad is to depreciate values. That might apply to property which is available, and does apply, to property which is available for residence purposes. On the contrary, you have the mass of the property there which is available for purposes other

than residence; the presence of the railroad increases the value.

Q. I will ask you about that if you will confine your answers to the questions asked, Mr. Morgan. There is no use in arguing your whole case every time I ask you a question.

A. Well, I merely want to make it plain that there are compensating features to this, right straight through.

Q. Yes, we will get to the compensating features in a little while. It is utterly impossible, however, is it not, to value these residence lots that we have referred to, which you have used among your criteria of value, on the hypothesis that the railroad was not there; that is utterly impossible, isn't it, in your judgment?

A. I think I stated, in my direct testimony, that it is the very presence of these railroads which gives the adjacent land its value.

Q. I will repeat the question. Give attention to the question, Mr. Morgan. (Last question read.)

A. Well, I think I answered the question.

Q. What is your answer to it?

A. Read the answer.

Q. Oh, never mind that. The answer had no more to do with the question than the flowers in the spring-time, didn't refer to it. Mr. Morgan, can you give us any opinion as to what the value of these residence lots would be upon the hypothesis you have adopted of eliminating the railroad improvements in that section?

A. The value of the property by which the Minnesota Transfer was measured was taken just as it exists today.

Q. I didn't ask you what you took. Just read the question and see if you can't answer that. If you don't understand it—

The MASTER: The question contains a hypothesis, Mr. Morgan. If you can admit the hypothesis, answer the question. (Question read.)

WITNESS: Yes, I see now what he is endeavoring to get at.

Why, no. Of course, when it comes to entirely eliminating this Minnesota Transfer property, it probably can't be done.

Q. The tendency of the presence of the Transfer property is to depreciate the value of all residence property, isn't it, that is near to it?

A. I think I have so testified.

Q. And, in your opinion, the presence of the railroad property has, in fact, depreciated the value of the residence lots included in this section?

A. It has some of them. As a whole, I say that it has. It has some of them more than others; some of them not at all.

Q. I am confining it to residence lots.

A. Yes, to residence lots.

Q. The presence of the noise and smoke and environments of this great yard is very undesirable for residences, is it not?

A. Yes, it is given over pretty much to the manufacturing industries.

Q. Well, Mr. Morgan, this map marked "9-A" is the sectional map that includes the Minnesota Transfer, doesn't it?

A. Yes.

Q. That includes the Great Northern yard, does it?

A. Yes.

Q. Now, the hypothesis that underlies that thing is this, that the railroad lands, included in that section, measured in units of area, are on the average worth just the same as the other lands included in that section per unit of area on the average?

A. It is the surrounding property that has been taken as the base from which to estimate the property of the Minnesota Transfer within the limitations of the section.

Q. Did my question state it substantially right?

A. I have answered it as it stands on the map.

Q. That is, your theory involves the assumption that the non-railroad lands in this section are, on the average, per

square foot, worth exactly the same as the railroad lands in this section, does it not?

A. No, except that you are considering the lands owned by the Minnesota Transfer as representing the true value. In other words, the railroad value that I have attached to those lands has the multiple applied to it just the same as the other.

Q. Now, take it without the multiple. Am I right without the multiple and considering the "true value", which you first called the market value?

A. Yes.

Q. The hypothesis, then, upon which you proceeded under this theory, is that the market value, on the average, of each foot of the non-railroad lands in this section, is the same as the market value (or true value as you have since denominated it) of the railroad lands per square foot in the section?

A. Correct.

Q. That is right?

A. Yes.

Q. And if the hypothesis is not right, your conclusion is not right? In other words, that is a hypothesis essential to the determination of what you now denominate as true value?

A. I do not see that this proposition is any different than any of the others, and I have stated that the contiguous lands have been made the basis upon which to establish the value of the lands owned by the Railway Company, and the prime reason for that is that the lands owned by the railway companies are not assessed.

Q. So then it follows, does it not, that if your computation of the true value or market value of the non-railroad lands in this section is erroneous, or if the assumption that the average value of the railroad lands and non-railroad lands in this section is the same is erroneous, then your valuation of this property is also wrong, is it not?

A. That is true.

Q. Was the shape of this section, its length and breadth, determined arbitrarily?

A. Yes.

Q. And it has led to a shape that is really fantastic, has it not?

A. Well, according to your phraseology I should think you would consider it fantastic, but it seemed to lay out the situation so that we could get at the value pretty intelligently.

Q. How many acres are included in this section?

A. I think about 314 acres in that outlying section.

Q. That takes in all of Section 1 of the Transfer?

A. Yes.

Q. And all of the St. Anthony Park railroad yard of the Great Northern?

A. Yes.

Q. Is the figure you have just given us the railroad land area or is it the total area?

A. No, that is the area of the land taken into account around the Transfer.

Q. How much railroad land is taken into account in this section?

A. Well, the railroad land taken into account is only that which is owned by the Minnesota Transfer Company.

Q. Didn't you use this sectional map for valuing the Great Northern property?

A. Not the same.

Q. In valuing the railroad land, does this map show a single section?

A. Yes.

Q. And all the railroad lands on this map within this dotted heavy red line, were valued on the basis of the non-railroad lands included by the same lines?

A. No, they were not. That section was designed to cover the Minnesota Transfer property only.

Q. You didn't use it to cover the Great Northern property at all?

A. No.

Q. Then in getting at the value of Section 1 of the Minnesota Transfer Company's property, did you use as a criterion the value of the Great Northern property lying contiguous to it on the same level and devoted to the same use?

A. I did not.

Q. Why?

A. We were considering the Minnesota Transfer property in its entirety, and the figures turned in by the Great Northern Company were so different that it was not possible to use them, and there being no assessments on that property owned by the Great Northern except that which was not used for railway purposes, we could not consider them.

Q. Well, you could, of course, and did, as a matter of fact, determine the value of the Great Northern property?

A. Not by that section as laid out there.

Q. No, but by some sections?

A. Yes, we did.

Q. You know what that is, or your records show it?

A My record will show that; I haven't it here.

Q. But that determination of yours was not taken into account as a criterion or one of the criteria for the valuation of the Minnesota Transfer property contiguous to it?

A. Not the value of the Great Northern property, no.

Q. Now, the Great Northern property is more similar, as to continuity of area, adaptability for railroad uses, and everything else touching the question of the value, than is any other property included within that section on that map, isn't it, as compared here?

A. No, I don't think so.

Q. Point out a single continuous tract of land on that section that is so well adapted to railroad uses of the same kind

as the Minnesota Transfer is as that Great Northern tract is.

A. The Great Northern property, according to that map, would only be measured from one side, from the upper side. Now, in determining the value of the Great Northern property, we have considered it from both sides. So far as the red line is concerned, it is parallel with the Great Northern, and yet in valuing the Great Northern property and the Northern Pacific property, as I recall, the section that was established through there extends from a point north of the Nortnern Pacific down, to measure the entire value of both the Northern Pacific and the Great Northern.

At request of Mr. Butler the last question was read to the witness.

A. I don't think I understand your question.

Q. All of the non-railroad land in that section is divided up into small tracts by street lines and lot lines, isn't it?

A. Yes.

Q. Very irregular in shape?

A. Yes.

Q. No single tract or plat subdivision as large as an acre, is there?

A. Probably not.

Q. How many acres in the Great Northern tracts that are shown there?

A. I can't tell offhand.

Q. Well, I should say, from the look of the thing, about 100, —nearly half as much as the Minnesota Transfer tract, isn't there?

A. Well, probably fifty or sixty acres, I should say.

Mr. O'BRIEN: Did you understand that that referred to the Great Northern land shown on that map which you said was fifty or sixty acres?

Mr. BUTLER: Yes; I so understood him.

WITNESS: Well, my acreage is too big; it probably amounts to thirty acres.

Q. This is the Great Northern land in here?

A. Yes.

Q. This yard here is not Great Northern?

A. No. Twenty-five or thirty acres.

Q. Well, twenty-five or thirty acres. Mr. Morgan, is there any reason in the world why the valuation, if it is right, that you have established upon the Great Northern twenty-five or thirty acres next contiguous to this yard here, should not be taken as a criterion for the value of the part of the yard of the Transfer Company which runs easterly and westerly?

A. No, I think possibly that is so. I can't tell from the figures now just how the Great Northern valuation runs with respect to the Minnesota Transfer, but my opinion is that there is not any material difference; there would not be any material difference so far as that particular piece of property is concerned at the north.

Q. But you didn't go out that way?

A. I took the entire Minnesota Transfer property into account.

Q. Is there any reason why the same section that you have used to value the Great Northern property shown on this map should not be used to value the Minnesota Transfer property where its tracks are practically parallel to the Great Northern property?

A. That might be done. That might be done, as I say.

Q. Don't you think that the Great Northern property has more relation and similarity in value to the Minnesota Transfer property where their tracks are parallel than the property between Wheeler avenue and the Great Northern property has to that portion of the Minnesota Transfer Company's land which is south of University avenue?

A. I have not measured the value of the Minnesota Trans-

for property in the vicinity of University avenue by the values which have been established up there at the north end of the map.

Q. You have used those values, though, haven't you?

A. I have used those values, and they only represent one-quarter of the values which have been used in getting at this from all sides.

Q. Then you have used as an element in your valuations the value that you got at on an assessment basis of the land between Wheeler avenue and the right-of-way of the Great Northern in establishing the average value of all of Section 1 of the Transfer property, haven't you?

A. In so far as it is related to that property.

Q. Well, yes, that is, you take the average of all the non-railroad land in the section—

A. Certainly.

Q. —and call that the same as the average of all the railroad lands in the section?

A. That is what I have testified to.

Q. Now, in getting at that average, you included the property between Wheeler avenue and the right-of-way of the Great Northern?

A. Yes.

Q. But you did not include the 20 or 30 acres of the Great Northern which you had in fact valued, did you?

A. Yes; and as I say,—

Q. Well, did you include that?

A. I did not include the value which I had put upon the Great Northern property there; I did include the value of all of the lands lying north of the Great Northern as a base, and there should be no material difference, and I think the records will show that there is no material difference in the value of the Great Northern property and the Minnesota Transfer

property if it is considered along parallel lines to the Great Northern.

Q. But you have not so considered it, have you? You do not claim that the property of the Minnesota Transfer in this section which is alongside of the Great Northern and running east and west, with trackage on it running east and west, is of the same value as the property on University avenue in the same yard, do you?

A. Why, no, I do not.

Q. It is probably of lesser value, isn't it?

A. Very much less.

Q. A great deal less?

A. Yes, a great deal less, I said.

Q. Would you say half?

A. I have not said how much. I have not considered it in that way.

Q. Now, to value, we will say, that part of the yard between Prior avenue (or the Milwaukee track is where you commence) and University avenue, you have taken into account the property between Wheeler avenue and the Great Northern tracks, which is about two miles away, haven't you?

A. We have taken an average price.

Q. But you have taken that into account?

A. That goes into account, certainly.

Q. Are there many instances in your work of valuing railroad yards in St. Paul where you use non-railroad property in getting at your average which is located from a mile to two miles from the railroad property to be valued?

A. I do not understand your question as put.

Q. Well, then, there is no use of wasting time about it. Let me make it so you will understand it, if I can. In getting at the average value of this tract, including the land between University avenue and the Milwaukee Short Line, you have taken into account, with other property, the strip of property

between Wheeler avenue and the Great Northern right-of-way, which is from a mile and a half to two miles distant from the portion of the tract to be valued to which I have referred. Now, I ask you if there are many instances in your work in this city, or Duluth, or Minneapolis, where you have taken so distant property (included with closer property, to be sure,) to get at your value.

A. That does not state the question fairly.

Q. In getting at the value of this property, including that which is at the most southerly end, did you take into account the value of the land at the northern end?

A. Yes, I took into account all the land lying around the property owned by the Minnesota Transfer Company.

Q. Including that at the northern end?

A. Yes, and including that at the southerly and westerly and easterly.

Q. Are there any such cases in your work in St. Paul and Minneapolis, where you took into account non-railroad land so far away as this land is at the north end from the south end of your yard?

A. I do not think there is any other property in the Twin Cities, or in Duluth, that is situated just exactly as the Minnesota Transfer property is, or in which we found it most desirable to consider it in one section. It represented a great body or a solid body of land, and we concluded that the most intelligent way to get at that was not to attempt to divide it into small sections but to consider it in its entirety and measure it by the value of contiguous property that lies around it on all sides.

Q. Mr. Morgan, the University avenue portion of this property (that is, the property on both sides of University avenue,) is the most valuable?

A. It is.

Q. That is, extending from the Milwaukee tracks to a like

distance beyond University avenue?

A. Yes.

Q. Half or three-quarters of a mile there?

A. Yes.

Q. Now, suppose we just turn that section on its axis and instead of making a north-and-south section make an east-and-west section, along both sides of University avenue, with eighty rods, or such a matter, on each side for a distance of a couple of miles, why would not that be a good way to get at the value of the property in the section to which I have referred, to-wit, from the Milwaukee road to a point north of University avenue equal in distance between University avenue and the Milwaukee road?

A. That might be done. My judgment, however, is that if that were done you would not have, as a result of that valuation, a much different result than has been ascertained by the other process, for the reason that the land of the Minnesota Transfer Company lying between the Milwaukee and eighty rods north of University avenue constitutes a greater bulk of property proportionately that is of a high value than that which you will obtain above of a low value.

Q. And you think you would get about the same result if you made a section extending from Snelling avenue on the east to Raymond avenue on the west a half or three-quarters of a mile wide?

A. That is, transposing the position of this at right-angles?

Q. Yes, sir. It is to make your section along University avenue (University avenue in the center of it) about a half or three-quarters of a mile wide, extending from Snelling avenue on the east to Raymond avenue on the west, and call that the average of the non-railroad land included in it the same as the average of the railroad land included in it,—why not do it that way if it is physically as convenient?

A. The limitations of Snelling avenue on the east and Ray-

mond avenue on the west are very different and it is a very much longer section of property than is the location of the Minnesota Transfer property extending from the Milwaukee tracks north eighty rods.

Q. Yes, I know the shape of it, but the shape is an arbitrary matter, isn't it? I know it would not be the same shape or bear the same relation, but I am trying to find out why your principle could not be applied just as well that way, with just as much assurance of getting a right result.

A. The position and the shape of the Minnesota Transfer property is such that it would not reasonably permit of treatment in that way. I can see that if the property now owned by the Minnesota Transfer Company were divided up into sections, the property lying both north and south of the Minnesota Transfer would be more valuable, would show at a higher price per acre.

Q. Yes, that method suggested would bring out a higher result, wouldn't it?

A. So far as that particular property is concerned, but we are considering the Minnesota Transfer property as a whole and not with respect to that particular land in there.

Q. So your objection to that method would be that, as a matter of fact, it did not take in the whole of the Transfer property and that it would give a higher value for the property on each side of University avenue; that is the objection, isn't it?

A. All of the property east and west of the Minnesota Transfer in the vicinity of University avenue is of a high value, and that has been taken into account. Also the property lying south of the Milwaukee, which has been taken into account, is high-price property. Now, all of that high-class adjacent property has been taken into account in measuring the value, so far as it relates to it, in that particular part of it.

Q. I know what has been taken into account, I am trying

to find out, if I understand your objections to the establishment of a section such as I have described, to-wit, from Snelling avenue on the east to Raymond avenue on the west wide enough to include the section to be valued on each side of University avenue.

A. Why, such a section could be devised, such a section could be gotten up, but what would be the purpose of it?

Q. Wouldn't it value your property just as well?

A. It might value the property but it would value it away beyond limitations, both on the east and west, so far beyond it that there would be no reason in it.

Q. That is, that there would be no reason in it at all?

A. No reason in it at all.

Q. And the result would not mean anything, would it?

A. It wouldn't to me, it might to some.

Q. It wouldn't to anybody that had sense, would it, Mr. Morgan?

A. Well, I don't believe it would.

Q. Now, suppose we had included along University avenue here—What is the scale of this?

A. 100 feet to the inch.

Q. You have included here outside of railroad property about six or seven hundred feet on the west and on the east,—on one side about four hundred and on the other about eight hundred; now, suppose we had extended that section twice as far on University avenue, so as to get as much non-railroad land on University avenue as we have railroad land on University avenue, wouldn't that, in all human probability affect the result?

A. It probably would.

Q. It would increase it, wouldn't it?

A. I think that, undoubtedly, it would increase it.

Q. You think it would make it too high if you came down to the White Enamel Refrigerator establishment on University

avenue on one side and to the city limits on the other, do you?

A. I don't think there would be any justification in that.

Q. You think it would make it too high, don't you?

A. I don't know what it would make it; I didn't consider it along those lines, they were far out of my mind—any such thought as that.

Q. Is there any difference in value between the blocks of land next to the railroad tracks on each side of University avenue and those adjoining them farther away?

A. I couldn't say.

Q. If there were and another tier of blocks were taken in, it would affect your result, wouldn't it, either increase it or decrease it, according as the value was?

A. As I have stated, the section has been arbitrarily established.

Q. Is there any reason for saying that where I draw my finger should not be included in the section instead of omitting, as you have, all this land?

A. Yes.

Q. What is it?

A. The reason for it is that, having established a general average distance out, that would throw us beyond the limitations of the average distance.

Q. What is your average distance out here?

A. Well, probably it is five hundred feet, I should say.

Q. What is the greatest distance out?

A. Probably seven hundred feet.

Q. Measuring it on the north along the easterly boundary it is about 1,400, isn't it?

A. Well, ten or twelve hundred feet there.

Q. If you had applied ten or twelve hundred feet on University it would have changed your result, wouldn't it, either increased it or decreased it?

A. Yes, but you do not take into account the fact that we

had to go beyond the Great Northern there to get any property.

Mr. O'BRIEN: Where?

WITNESS: On the north.

Q. How far beyond the Great Northern are you?

A. Probably 400 feet.

Q. Will you measure that?

A. About that.

Q. On the east boundary how wide is the strip?

A. Probably about 300 feet there.

Q. Why didn't you make it twice as wide there, and why not run like that? (Indicating). Any reason for not doing it? Let me designate that, extending from Prior avenue, where it intersects the Great Northern road, down to Minnehaha street, where it intersects your easterly boundary.

A. You see, Mr. Butler, on the section line a jog in that property. We have tried to follow the property within the limitations.

Q. What, probably, would have been the effect of amending your section as I have indicated?

A. I have not investigated it; I do not know, in that particular locality.

Q. Mr. Morgan, do you express any doubt at all upon the proposition that the non-railroad land within four or five hundred feet of these railroad tracks has not been practically destroyed as far as value for residence purposes is concerned; is there any doubt about that?

A. There is considerable of it that is given over to residence property. It does not make a particle of difference, Mr. Butler, what the value of the property is as residence property, we have the sales of the property in there, and whether that property is assessed low or high the sales give the index of the relative value.

Q. Have you marked on this map the lots that have been sold?

A. No, I have not.

Q. It does not show that. It usually does show on your section?

A. Well, that was a special map that we prepared of the Minnesota Transfer property.

Q. Well, now, if you were to encounter sales, within three or four hundred feet of this railroad yard, of residence property, property devoted to residence uses, would you not think that the price was made by the existence of the road and made very low on that account?

A. That might be true.

Q. Well, it would be true, wouldn't it?

A. Yes, (I think I have testified to that several times) it would affect residence property; but, on the contrary, we have very considerable property adjacent to the Minnesota Transfer that is given over to manufacturing purposes and that it is of an enhanced value by that very purpose.

Q. So your idea is that it balances, one the other?

A. I think that, as far as practicable, you get a very fair index of it.

Q. Isn't that the merest guess-work?

A. No, I don't think it is, Mr. Butler. It is a matter of judgment, of course.

Q. Isn't is mere opinion?

A. It is an opinion, certainly.

Q. And that opinion is essential, is it not, as to the correctness of your conclusion as to this value?

A. That might be true in a way.

Q. Now, Mr. Morgan, don't you think that any intelligent man who knows enough from his experience, etc., to have an opinion as to the value of the railroad lands themselves, is more reliable, a great deal, than this remotely removed system of opinions that you have?

A. Well, I don't know as I can answer that question, Mr.

Butler. I feel a little bit differently than one of the witnesses who testified in the rate case. I have no desire to cast any reflections upon the figures that they have turned in. Mine are made up to the best of my ability and I believe in them; I believe that the base is sound and I believe that the results that can be produced from it are reflected in a more substantial way. I know this, that if I were called upon to go out and look over the Minnesota Transfer property and place a value on that property, it would be one of the most difficult things to be done because I could not, satisfactorily, at least, separate from my mind the fact that that property is utilized for transportation purposes. Now, then, that fact, in itself, makes it valuable, but I am seeking to estimate what it will cost to reproduce that property, and, in order to do that intelligently, I must remove my mind entirely from the fact that that property is, so to speak, invaluable from the use to which it is actually put; therefore, I believe that some other process which will enable you to separate that land from its present use and to make up an estimate of reproduction cost is satisfying to my mind if it is not to any one else's. Now you take property—

Q. Can you get at reproduction cost without getting at market value or including it?

A. I should say not.

Q. Now, Mr. Morgan, isn't it just as easy to form an opinion as to the market value of the railroad lands in that Section 1 as it is to form an opinion that the non-railroad land bounded by these very irregular lines is, on the average per square foot, the same price as the railroad lands? Isn't it merely a question of opinion, anyway? One opinion is direct on the thing to be valued, the other is indirect—through assessors, first, and next yourself,—as to the equality of the two on the average?

A. It apparently is easy for others to do so, but I have not found it to be so. It does not appeal to me as being possible

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to consider the lands in themselves without taking into account the actual use to which they are put. Now, you take this property that stands in the name of the Minnesota Transfer Company there to-day, it was bought for almost a nominal sum of money. From the Merriam estate there were 49.6 acres. They paid, I think, about $200 an acre for it. From the Hewitt estate another 40 acres, that they paid about $225 an acre for, and from the Tatum estate, 60 acres, they paid about $190 an acre for it. Now, there is a total of about 150 acres of land, that cost the Minnesota Transfer Company probably not to exceed $35,000. There are only 50 acres remaining which I have been unable to get the original cost upon.

Q. Well, suppose that Mr. Tatum and Mr. Merriam and Mr. Hewitt and the others had given the Transfer Company that land, it would not affect its present value, would it, under your system, or did you take into account these figures which you have given us in getting at your reproduction cost in Estimate A or Estimate B? Did you take those figures into account?

A. Not at all, I am just merely stating what the property cost.

Q. Well, in your theory did the cost of the property have anything to do with the solving of the problem?

A. Not in the slightest.

Q. So that does not meet the situation at all, does it, Mr. Morgan? The property is there to be valued, and you say that the property included in this section south of the Milwaukee Short Line has some relation to the value of the property at the north end of that yard, do you, two miles away?

A. I say that that property has been valued in its entirety, and whatever that relationship may be, it is relative, and whatever the effect of the value of the property at the north may be, it is also met by the value of property from the south and

from the west and from the east, in fact from all sides of the Minnesota Transfer property.

Q. But independent and in and of itself there is no relation, is there, between the property on Wheeler avenue and the property on Prior avenue or St. Anthony avenue?

A. Possibly not, in itself, no.

Q. Then why didn't you take the Northern Pacific and make one section of it extending from the union depot connection to its yard out here at Como where its big shop is?

A. It might be done.

Q. Why didn't you do it that way? That would get at just as good a result, wouldn't it, as you have gotten at on this one?

A. I have considered it in its entirety and used the same basis and same ratio right straight through.

Q. Well, why did you divide it up at all?

A. I said I divided it up for convenience in the work.

Q. That is the only reason.

A. That is the reason.

Q. But this morning you assured us that it would change your valuation on the Union Depot property a hundred thousand dollars if you divided it up in some places, didn't you,—more than ten per cent?

A. And that was due, Mr. Butler, to the fact that I did not attempt to take into account the refinements of the shape of the Union Depot property, and that whatever mistake, if you wish to call it that, took place by that, it inured to the benefit, it gave greater value to the Union Depot property, than though I had considered it in its finer details.

Q. But you used precisely the same data?

A. Precisely the same data.

Q. And using them in different combinations you made a difference of about ten per cent?

A. Yes, and that was only due to the fact that there was

a different quantity of property opposite each owned by the Union Depot Company.

Q. No matter what it was due to.

A. Well, it makes a difference.

Q. So that if you take the data included in all of your thirty-six Northern Pacific sections and apply them all at once, there is no assurance that you would come out in the total valuation at the same place as if you applied them in detail, or, if you took half and applied it, and then a quarter, and so on, dividing geometrically, you would probably get a different result on every different combination, wouldn't you?

A. Not a material difference. There might be a slight difference, but not a material one.

Q. Wouldn't it be practically all over the System the same as it was at the union depot?

A. No.

Q. Why?

A. Well, because the inequalities in the width of the right-of-way would not be the same, would not be so extensive.

Q. The inequalities would vary, then, as the width of the right-of-way,—have some relation to it?

A. To a certain extent they would.

Q. And so it would depend, would it not, on how it happened to balance against the width of the right-of-way in the different sections that you divided up, just as it did with the depot question? In other words, you can take these same data and use them in different combinations and come out differently if there is a variation in the width of the right-of-way as there is in that fish-shaped tract of the Union Depot property?

A. It comes out differently in the Union Depot property, there is no question about that.

Q. Because of that fact?

A. Because of the inequality in the width; and, as I say,

my error balances on the right side so far as the Railway Company is concerned.

Q. You gave too much?

A. Well, it was liberal.

Q. Which is right, which combination is right?

A. It was liberal.

Q. Both liberal?

A. Well, I am entirely satisfied as to that on the one that I have given.

Adjourned until Tuesday morning, February 16th.

FEDERAL BUILDING, St. Paul, Minn., February 16, 1909. Hearing resumed at 2 o'clock P. M.

CHARLES F. STAPLES,

sworn on behalf of Defendants, testified:

By Mr. O'BRIEN:

Q. Your name is Charles F. Staples?

A. Yes, sir.

Q. What is your age, Mr. Staples?

A. Fifty-two.

Q. Residence?

A. Dakota county, Minnesota.

Q. You are a member of the Railroad & Warehouse Commission of the state of Minnesota?

A. Yes, sir.

Q. And have been a member of that body how long?

A. Since January 1, 1900.

Q. Prior to that time, what had been your business?

A. Well, I suppose I might say, primarily a farmer; was occupied, some five or six years, in a bank; managed a bank; taught school some three or four years. I don't suppose you care about the details.

Q. Well, had you been in the banking business for some time?

A. Yes, sir; as I recall it now, about five years.

Q. What other public offices have you held besides that of Railroad & Warehouse Commissioner?

A. Oh, school officer and all the offices of the township, county commissioner, member of the legislature for four terms.

Q. Since you have been a member of the Railroad & Warehouse Commission have you devoted your time exclusively to the duties of that office?

A. Entirely; I have had no other business or occupation of any kind.

Q. State what are the general duties of the board of the Railroad & Warehouse Commission. I don't mean the legal definition of them, but, practically, what matters come under your supervision.

A. Do you wish it confined to the railroad duties?

Q. Yes.

A. Well, in a general way, the Commission is vested with authority, and it is made its duty, to supervise the business of the companies; to entertain any and all sorts of complaints made by people of the state, different citizens or communities, against the service afforded by the companies. And when I say service, I mean in its broad application, the service in any respect Also that necessarily involves or encompasses the question of rates, both as to their reasonableness and questions of discrimination, either as between individuals or as between localities. That is, perhaps, a brief definition.

Q. Well, in the performance of your duties for the past eight or nine years, since you have been in the office, have you come in constant communication with the railroad officials of Minnesota?

A. Yes, sir, necessarily so. That is true largely from

the fact that seventy-five per cent, and, I think I might say, ninety-five per cent of the complaints which come to the Commission are adjusted amicably by the Commission between the companies and the parties who feel they have a grievance, and that necessarily brings the Commissioners into close communication with the officials of the roads.

Q. Could you give any general statement estimating the number of complaints considerd by the Commission during a year?

A. Well, my answer would not be reliable, as I have made no inquiry into that.

Q. There have been, each year, a number of complaints?

A. Yes, a great number of complaints come to the Commission.

Q. Covering almost every phase of the questions of rates and service?

A. It would begin, perhaps, with the question in the freight end of the business; with the furnishing of cars; the fair distribution of cars; the question of what minimum weight they had the right to charge for in a given shipment; the question of discrimination between individuals in the matter of a particular rate; between localities; the reasonableness of a rate; the question of a switching charge; the question of additional train service necessary; the question of the condition of the equipment itself; the condition of the tracks, bridges,—and, I might go on and enumerate everything involved in the matter of operating the road. I think questions of all characters come to the Commission, and, as I said, many of them are arbitrated, are settled upon a basis that the Commission deems to be fair, without making any formal investigation where a hearing is had and an order made.

Q. Prior to 1905, can you state, generally, the character of complaints received with reference to rates?

A. Why, yes. Invariably, if a complaint came to the Commission it would be perhaps based upon one of two claims; either that they believed somebody else in the same community (I might say town) or a nearby town, was getting a much better rate (much lower rate), or, that the rate for their mileage (the mileage to their town) was unreasonably high as compared with the rate to another town upon the same line of road, in some of the instances, and, in other instances, the same mileage upon other roads, or to towns equally distant from the terminal on other lines. That was usually the basis of the complaint in the matter of rates.

Q. State whether such complaints generally referred to a particular rate upon a particular commodity or class of commodity, or to rates generally.

A. These complaints were almost always confined to rates upon some particular commodity.

Q. So that you were constantly engaged in passing upon the question of one particular rate to one particular locality?

A. Yes, sir; but I ought to have enlarged a little on my previous answer. There was a growing feeling, and complaint was being formulated by sort of delegations, often being presented through members of the legislature, that the rates generally in their section of the state were not reasonable as compared with rates in other sections of the state. That would come from the fact, if the complaint was directed to the grain rates, that certain other portions of the state were being favored in the matter of grain rates, and, if it was coal, it would be perhaps the same character of complaint; and what I mean to show is that there was a general feeling of unrest growing, broader than the matter of rates, directed to some specific commodity at one or two or more stations.

Q. Now, prior—

A. And, if I might go a little further, there had been some adjustments made,—I might call your attention to the

adjustment of coal rates had in our office, of lumber rates, of stock rates, which involved a considerable adjustment, or, at least, an adjustment over a considerable territory, in different parts of the state. All those adjustments I refer to were prior to 1905, as I remember it (I am sure they were), and were adjusted without an order on the part of the Commission. They did not extend over the state as a whole, however; they were confined to certain localities. The coal and lumber rates were quite extensive; that is, the adjustment of coal and lumber rates covered a considerable portion of the state.

Q. The legislature of 1905 provided, by Chapter 176 of the laws of that year, that no rates could be changed by a railroad company except after application to the Railroad & Warehouse Commission. Prior to the enactment of that law, were rates changed by the railroad companies at will by filing a schedule of the new rate?

A. Do you mean without the consent of the Commission?

Q. Yes.

A. No, sir.

Q. Well, now, prior to the passage of Chapter 176 of the laws of 1905, was it not the practice for the railroad company to change rates without application to the Commission, or without a hearing?

A. Yes, sir, it was the universal practice.

Q. Well, that is what I meant. You didn't understand my question. I say, prior to the passage of that act.

A. I understood you subsequent; my answer was based on that understanding of your question.

Q. Then, prior to the passage of that act, in order to change a rate, a railroad company merely filed its new schedule?

A. Yes, sir.

Q. And that became the rate in force unless the Commis-

sion took some action upon it?

A. Yes, sir; and the Commission could take no action except as provided by law, either a formal complaint be lodged, or the Commission, on its own motion, take up the matter for investigation.

Q. Was it the custom to make such changes with regard to particular rates, particular commodities?

A. Yes, sir.

Q. The result of that was to have a large number of schedules of rates upon file, was it not?

A. Yes, sir. You mean a large number of tariffs?

Q. A large number of tariffs.

A. Yes; it did encumber our office with a great many tariffs.

Q. Can you give the number of separate tariffs on file in the office of the Railroad & Warehouse Commission on or about January 1, 1905?

A. All told there were between ten and eleven hundred, something like 1,040, I think.

Q. Separate tariffs, filed by the railroads in Minnesota?

A. Yes, sir. That would be tariffs affecting state business.

Q. Since the passage of the act of 1905, the companies before changing a tariff, have made application to the Commission, have they not?

A. Yes, sir, that is their uniform rule now. Of course, in answering that question, you mean before changing any existing rate?

Q. Yes, before changing any existing rate, either lowering it or raising it.

A. Either one, yes; or any minimum weight, or any rule which in any way affects a shipment.

The MASTER: Prior to that act, could they raise as well as lower the rate?

WITNESS: Prior to the act of 1905, the custom was (and there was no objection to it) that the roads did raise any rate or any schedule of rates, lower any rate or any schedule of rates, upon any and all commodities, change the minimum weights upon cars for definite commodities, and make any other change in their tariffs or charges, switching charges or any charges, that they saw fit. I am not complaining of it, there was no objection to it. Since the passage of the act of 1905, no change in any respect affecting the question of charge or the cost to the shipper, can be made or is attempted to be made, without the written consent of the Commission, upon written application. It is left to the discretion of the Commission to take such means as it deems necessary to determine whether the proposed change is reasonable and just, and, in many cases, a hearing is ordered as between the company or companies affected and the shippers which might be affected, and the decision is rendered after the final hearing. The Commission is vested with the authority to either grant the petition, deny the petition, or grant it in a modified form; it may make such findings as it deems just, and that is the practice.

Q. Now, will you state whether or not many such applications have been received by the Commission?

A. I looked that up, myself, on Saturday, and, as I recall it, the number of applications since the passage of that law is close to 950. I made no memorandum, but I think that is it.

Q. Have each of these applications been investigated?

A. No application has been granted without the matter first being thoroughly understood by the Commission, and if the interest of shippers was in any way jeopardized or affected, they would be communicated with, either by 'phone or letter, and, if deemed necessary, a hearing was had. Many hearings have been had upon these applications, many of them

have been denied, many more of them have been granted,—and, in that connection, I might say that after the investigation, and the facts developed, the company has made the request that they might withdraw the application.

Q. In some cases?

A. In quite a few cases. It would have a more far-reaching effect than was first thought by the company when the application was made.

Q. What opportunity has this practice, as established since 1905, given you to become acquainted with the manner of establishing rates, the principles underlying the establishment of rates, and the subject generally?

A. I feel that the schooling which that has afforded the Commission would outweigh any other means the Commission has, or has ever had, of determining or knowing the basis upon which rates are made by the officials of railway companies, the reasons for which rates are made (different rates upon different commodities), the influences that are perhaps the most potent factors in the question of establishing rates.

Q. Prior to the enactment of the law of 1905 to which I have referred, was it a practice amongst the railway companies to put into effect what might be called special and temporary rates?

A. Yes, sir, that was frequently done; that is, upon a special commodity.

Q. Have you prepared a table giving an illustration of some such special and temporary rates so put in by various railroad companies?

A. Yes, sir; that is, I have had a table prepared under my direction.

Q. Will you produce it?

Witness produces statement, marked for identification "Defts.' Ex. 3-C—Staples."

Q. Will you please explain this table Ex. 3-C?

A. The first column indicates the name of the company; the second and third columns indicate the stations from which and to which the traffic moved; column 4 represents the commodity transported; column 5 represents the temporary rate put in; column 6 represents the tariff rate; column 7 the date the temporary rate became effective; column 8 the date the temporary rate would expire; column 9 represents the date the tariff was filed in our office, and column 10 represents the traffic number, which means the number of the tariff in the traffic department.

Q. That is what has been referred to by Mr. Baird in his testimony as tariff authority?

A. Yes, sir. Now, generally I might say (concluding my explanation), giving an instance and I will not take the first, because there seems to have been no regular tariff I will take the second: The Northern Pacific and the Chicago Great Western (which would be a joint tariff), between Bemidji and Red Wing, on merchandise, a rate of 46 cents was put in where the tariff rate was 92 cents. This 46-cent rate became effective October 4, 1904, and expired October 19, 1904. The tariff was filed in our office October 3 (one day before it became effective), and the number of the tariff in the traffic department was 16,239.

The MASTER: These tariffs were filed without notice, and, perhaps, late in the day, and withdrawn without notice, or was there a limitation put on the time?

WITNESS: The tariff itself carried the limitation, but no advance notice given as to the date of filing.

The MASTER: The law required, at that time, that a tariff should be filed ten days prior?

WITNESS: Any tariff should be filed ten days prior to its becoming effective. The question might be asked why the Commission countenanced a tariff filed one day before it became effective, and I could not readily answer it. There was

no means of keeping these tariffs checked up, in those days; the facilities afforded did not make it possible, or, at least, practicable; there were too many of them, in the first place, and, in other cases, the tariff might be filed after it had expired. I don't know whether anything like that shows here or not, but there have been such cases. In other cases the tariff would not be filed at all. That has been overcome, by a rule of our office, which requires all tariffs affecting state traffic to be consecutively numbered, and all amendments to any such tariffs to be consecutively numbered, and if a number comes in and one preceding it,—that is, if No. 210 comes in and 209 is not on file, it is immediately apparent that a neglect has been had and one tariff has been omitted; that may, it does occur, sometimes, by oversight. But what I mean to convey is, that we know now, absolutely, that we get every tariff.

The MASTER: Until filed it was not a legal tariff, though?

WITNESS: It wasn't a legal tariff until filed nor would it be a legal rate until it had been filed ten days.

The MASTER: They took their chances?

WITNESS: Yes, sir. I am not excusing the Commission nor criticising the companies. That used to be the practice.

Q. Mr. Staples, I call your attention to the 12th item upon Ex. 3-C, Chicago, Milwaukee & St. Paul.

A. That was the name of the road filing the tariff; the points between which the traffic moved was Minneapolis and Wabasha; the commodity was wheat; the temporary rate put in was 2 cents per hundred; the tariff rate was 10 cents per hundred; the tariff became effective February 15th, 1904, and expired March 31st, 1904; was filed in the office February 17, 1904; the traffic number was 43,512.

Q. Have you attempted, in this table Ex. 3-C, to give all of the instances of the character illustrated by this exhibit?

A. Not at all, nor to select any particular ones. I think

it was Mr. Flinn who was instructed to prepare this table. I asked for no instances, nor saw any of them, until the table was prepared, but I asked him to give a table illustrating the effect of this sort of tariffs, which we call, in our office, "Midnight tariffs," and I might add, while I am utilizing this tariff or this exhibit in this case, I had it prepared in support of an argument before the (legislative) committee for this change of the law.

Mr. BUTLER: This same table?

WITNESS: Yes, sir.

Q. Now, describe what the effect would be and how the temporary tariff, shown at item 12, could be used.

A. Well, the way these tariffs were brought about was, many times, in this way: The mill at Wabasha, we will say (I assume this wheat went to a mill at Wabasha), they were perhaps long on transit and found it impossible to secure local wheat to fill out that transit, and the milling company would go to the railroad company and explain the condition they found themselves in and ask for a special rate and agree to move this traffic within certain days if the company would put in such a rate, and they, of course, would be prepared to take care of these shipments, whereas, the public would not, as a rule, be prepared, and while this tariff rate would be open to the public, it was, as a rule, of little avail. No doubt the two-cent rate on wheat was the only rate charged between those dates when this tariff was effective. I think that would be observed by the company, without doubt, but the idea is that, by these means a person, if they had the influence, could secure what is a special rate and nothing else.

The MASTER: What do you mean by the expression "long on transit?" I think I understand it, but I would like to have it in the record.

WITNESS: I can explain that very well by instancing two cases now pending before the Commission. One is the Sleepy

Eye Milling Company. I have forgotten the amount of transit they claimed to have on hand. I will call it 50,000 bushels that they have on hand, and they get it in this way: they buy wheat from some point beyond Sleepy Eye, I will say (ought to get it on the same road), I will say Bismarck, to illustrate. That isn't on that road.

Mr. BUTLER: Take Watertown.

WITNESS: Take Watertown, that is better,—thank you. This is the Northwestern road upon which Sleepy Eye is located, and take Watertown, and I will call the rate on wheat from Watertown to Chicago 22 cents. The Milling Company pays the 22 cents for wheat shipped from Watertown to Chicago, with the privilege of milling the wheat at Sleepy Eye, and they pay an additional one cent per hundred for that privilege, which means 23 cents per hundred. I am not claiming 22 cents is the rate, I don't know what the rate is.

The MASTER: No, assuming that.

WITNESS: Yes. Now, when they mill this wheat in Sleepy Eye, they sell the offal, the by-products, locally; they sell much of the flour locally; they find a fair market for flour in surrounding towns and ship it to these towns. As a result, where they ship 100 cars of wheat or 100,000 bushels from Wahpeton, to be ground in Sleepy Eye, they pay upon that the full rate to Chicago. When the wheat arrives at Sleepy Eye, if they have sold 50,000 bushels of it, or the product from 50,000 bushels, they are 50,000 bushels long on transit; in other words, they have the rate paid from Sleepy Eye to Chicago on 50,000 bushels or its equivalent in flour. That is what I call long on transit Just another case, that will, perhaps, elucidate it a little better: Mr. Magnus Johnson, who operates a mill at Red Lake Falls, recently lost his mill by fire, and he is, as he represents to the Commission, eleven million pounds long on transit. He buys his product (his grain), what he can, from surrounding farmers, but mostly

from points north; and take, for instance, St. Vincent. The rate from St. Vincent to Minneapolis is 12 cents; he pays the additional cent, which makes it 13; ships the wheat into Red Lake Falls and grinds it into flour, ships the flour and the by-products on to Minneapolis, and, in the ways I have suggested, by the selling of the flour and its by-products locally and the burning down of his mill and destruction of a lot of the wheat he is eleven million pounds long on transit; in other words, he has the rate paid on that amount of wheat or its product to Minneapolis. Have I made it clear?

The MASTER: Enough to follow it with. I understand.

WITNESS: I assume that the milling company at Wabasha, for perhaps the same reasons or the reason which I gave for the Sleepy Eye man, was long on transit and wanted wheat to supply it. Going a little further with the Sleepy Eye case, they now have a case before the Commission in which they ask us to permit a lower rate than the regular wheat rate from some two or three points, I think they name particularly Tracey. The local rate from Tracey to Sleepy Eye on wheat is 8 cents. They want a lower rate established by the Commission, for a specific time, to enable them to make up this amount (they are long on transit), in order that they can get the wheat to grind to fill out that transit and send it on to Chicago, the point to which the rate is fully paid. Now, it is up to the Commission to decide what they will do in such a case.

The MASTER: What advantage is it to the railroad company to reduce the rate for them?

WITNESS: It is not always the question of advantage; it is the question of being forced to do it by circumstances that the railroad could not always control. Take this illustration: The wheat rate from Minneapolis to Duluth is 7.5 cents. There may be a case in here (in Ex. 3-C) where that has been reduced. I don't know that it matters, but either way it

moves makes no difference. Take the fourth item, it is a Northern Pacific item, Duluth to Minneapolis, wheat 5 cents. the regular rate 7.5. The rate was put in January 12, 1905, expired February 28, 1905. I have had it explained to me by railway officials, themselves, in one particular case, where a shipper desiring to ship comes to the traffic official and says he has a hundred thousand bushels of wheat to move from Duluth to Minneapolis, or he would like to move it. He represents that he cannot afford to move it if he pays the regular rate. He says, "How much will you move it for?" "7.5 cents." "I can do better." "Well, how much?" "Well, that is nothing to you, what rate will you make?" And rather than lose the traffic which they are led to believe they will lose, they sometimes make a reduced rate. As a matter of fact, the shipper may not have consulted any other road at all, and another road at that same period of time will be carrying at the 7.5 cent rate. Now, these instances I am giving date back to the enactment of this 1905 law. Sometimes these lower rates are justified, without any question at all. I don't mean to say, by my explanation here, that they are all rates made without justification, sometimes they can be justified,—not always the specific amount of the reduction, but a reduction can be justified. If the Northern Pacific should apply to-day, for permission to put in a temporary reduced rate on wheat, Minneapolis to Duluth, the Commission would not consent to the putting in of that rate without first notifying all the other roads of the fact that the Norhern Pacific has made such application.

The MASTER: Give them an opportunity to meet it?

WITNESS: Yes, sir. I simply speak of that as showing one of the means we take to protect both the railroads and the public.

Mr. O'BRIEN: Your Honor will remember that one of our contentions in this case is, that the rates fixed by the Com-

mission cannot be considered in this case, so far as enjoining them is concerned, because the law of 1905 has not been complied with, and that the stockholders' remedy should have been to compel the Company to apply to the Commission rather than attempt to enjoin the Company from continuing to obey the Commission's order.

The MASTER: That law being still in force and providing for such application?

Mr. O'BRIEN: Yes. The law was enacted in 1905, the Commission's order was made in 1906. Of course, in considering the two-cent passenger rate and the commodity rate, we concede that the Court will have to consider those upon the basis of the Commission's rate being in force. The revenue derived under the Commission's rate would be the total revenue, and then whether a further reduction could be made or not is the question, but we insist that, in so far as the enjoining of the Commission's rate is concerned, that cannot be done in this action, and this testimony is intended somewhat to amplify that position and show the propriety and necessity of the law of 1905.

We offer this exhibit, Defts.' Ex. 3-C—Staples, in evidence.

The MASTER: The Commission's order applies to the merchandise rates only?

WITNESS: Only.

Q. It was at the same session of the legislature, Mr. Staples, I believe, that the joint resolution was adopted directing the Commission to enter upon thorough investigation as to the rates in force in this state?

A. Yes, sir.

Q. Please read that resolution into the record, and state what chapter of the laws of 1905 it is.

A. At the session of the legislature of 1905 a joint committee of the house and senate was appointed for the purpose of investigating the general rate question in the state, and

before the close of the session that committee made the following report, under date of April 6, 1905:

"Whereas, the Railroad & Warehouse Commission is the proper tribunal and the only body properly equipped to undertake the work of securing an equitable, intelligent and fair adjustment of the rate situation in this state, now, therefore, be it resolved by the senate, the house concurring: We recognize the prevailing conditions which seem to warrant the existence of a distributing and a distance tariff, and believe that in maintaining a distributing tariff it is possible to provide not only several points in the state which are valuable to the people as sources of supply, but afford a home market for our products. We believe, however, the two tariffs should show but little difference in the rate for a given mileage, in no case should the difference exceed five per cent.

"Resolved, further, the Railroad & Warehouse Commission is hereby directed to undertake the work of securing a readjustment of the existing freight rates in this state, which will give a more uniform system of rates throughout the state and a uniform scale of percentages which each class rate shall bear to the first class, the readjustment to secure a substantial reduction in the existing merchandise rates."

Q. And at the same session of the legislature (the session of 1905) provision was made for ascertaining the physical value of the railroad properties in the state?

A. Not by any act of the legislature other than providing the funds which the Commission deemed necessary in order to make this investigation as complete as it was thought ought to be made.

Mr. BUTLER: Is there any chapter that you cite for that?

WITNESS: There is nothing, Mr. Butler. It is simply in the omnibus appropriation bill, the contingent fund appropriated for the Commission, and does not in any way refer

to the matter of valuation or what other use it might be put to.

Q. Immediately thereafter, was Mr. Morgan employed for the purpose of making the valuation?

A. Well, this resolution was passed in April, 1905, and shortly after the close of the session of 1905, the Commission undertook to find some suitable person to superintend the matter of valuing the properties, after it had been determined that we would undertake that work, and many consultations were held with different persons in different cities, and Mr. Morgan was finally engaged, late in the fall of 1905, and did not undertake the work until in the month of January, 1906, probably January 1st, as near as I remember.

Q. State what part you have taken in the work done by Mr. Morgan.

A. Do you refer to me personally?

Q. Yes, sir.

A. I have been what you might say in constant communication with Mr. Morgan regarding his work of valuing the roads. Many questions have been submitted by him to the Commission as to the question of policy or what course to follow in a certain instance, how to treat certain cases. I might illustrate by saying he would say, "I find a bridge at a certain point which the records show clearly was built and paid for by a certain municipality," and cite several cases, and it would be by the consideration of those questions that a conclusion would be arrived at what course should be taken with reference to it. In the matter of inspection, take the Northern Pacific, for instance I traversed every foot of the property with Mr. Morgan and his assistants, so that I am entirely familiar with just how he treated these questions, how he proceeded to value them, the extent to which he consulted the companies or the officials of the companies, the means he took to get his information. I don't want to

present the idea, for a moment, that I acted as an expert, technically, upon the matter of valuing the properties. Mr. Morgan was regarded as a competent engineer, and upon questions which were purely technical, after consultation and getting the advice of the Commission, with the benefit of his knowledge and experience I might say his conclusions were final. In the rural districts, while I would have no personal knowledge of the value of lands, my acquaintance being such, having met in the legislature many of the perhaps prominent men throughout the state, I had splendid opportunity, and always availed myself of inquiry, particularly in the different counties, with reference to the price of land, always having before me the chart prepared by Mr. Morgan or his assistants showing the results of his work of valuing those lands; and my purpose was to see if those values could be reasonably confirmed. I don't pretend to have known, personally, what the value of different lands was, except in a general way, but I am only indicating the interest I took in the matter and my purpose to be thoroughly informed upon his work.

Q. Now, as to the values placed upon lands in the rural communities did you come to a conclusion as to whether the values placed by Mr. Morgan were correct?

Mr. BUTLER: I think I will note an objection to that. Mr. Staples does not pretend, himself, to have been qualified to form an opinion as to the value of the lands. I think he has expressly said that he did not, but his idea was to talk with the gentlemen whom he happened to know in the various communities, with his chart showing the result of Mr. Morgan's work before him, for the purpose of finding out whether they thought Mr. Morgan's figures were about right, as I gather. I think it purely hearsay and the result of hearsay and not of the judgment of Mr. Staples himself, being backed up by individual instances from which he derived knowledge as a basis of his judgment. In other words, it is a good deal

like going out in the country and trying a case and coming back and swearing, in another controversy, what you think the proof out there established. I would like to have the objection run to the whole of this, if I may, without restating it.

Mr. O'BRIEN: Certainly.

A. Answering that question, I will say that I was surprised, generally at the nearness with which his values met the judgment of men whom I know to be thoroughly conversant in the matter of values. Now, I am not prepared to give any specific instances or cases, made no notes; this investigation of mine was general.

Q. Well, Mr. Staples, Mr Morgan was an employe of the Commission, was he not?

A. Yes, sir.

Q. And doing this work under the direction of the Commission?

A. Yes, sir, entirely.

Q. The results to be given by him were the results to be given by the Commission?

A. They would become, and are, the official findings of the Commission.

Q. And you considered it to be your duty to satisfy yourself as to the thoroughness and accuracy and fairness of Mr. Morgan's work, did you not?

A. Yes, sir.

Q. And you did so satisfy yourself?

A. I did so, yes, sir.

Q. When did the Commission enter upon the work directed by the resolution which you have read into the record?

A. The Commission began its work immediately after the close of the session of 1905, and continued, uninterrupted, so far as the work of the Commission was concerned, up to the date of the order, I think September 6, 1906.

Q. So that the Commission had under consideration the

schedule of rates subsequently ordered for about a year and a half?

A. Yes, sir; but, in connection with that, the whole rate question was being investigated.

Q. Yes, I was going to come to that. Now, what appearance by railway companies was made before the Commission during that time?

A. Well, of course, I could get that specifically. I might say that all the companies made an appearance. There may have been one or two exceptions with the small companies, but these hearings were participated in by practically all the companies in the state; all the large companies having any considerable mileage.

Q. And to what extent was evidence produced by those companies?

A. Well, I neglected to look that up, so as to give the number of volumes or number of pages of testimony, but the amount of testimony that was taken in writing was enormous.

Q. Several thousand pages?

A. I wouldn't like to answer, Mr. O'Brien, I don't know. A large amount of testimony was taken and transcribed.

Q. Following the order of the Commission dated September 6, 1906, and which fixed the rates upon classified merchandise was an order made by the Commission fixing rates upon commodities of the character mentioned in Chapter 232?

A. Yes, sir.

Q. The merchandise order, or the first order, was accepted by the companies and put in operation, was it not?

A. Yes, sir.

Q. The second order was not put in operation?

A. No, sir.

Q. Can you give the date of that second order?

A. It is dated December 14, 1906, effective January 25, 1907.

Q. Before the date when that order was to become effective, did each of the roads affected commence an action in this court to restrain the promulgation and enforcement of the order of the Commission upon commodities?

A. Yes, sir.

Q. While those suits were pending, the legislature of 1907, on the 4th day of April, 1907, established the two-cent passenger rates, I believe?

A. If the date is right, yes, sir.

Mr. BUTLER: That is right.

Q. And the same legislature, upon the 18th day of April, enacted Chapter 232, laws 1907, here referred to as the commodity rate law?

A. Yes, sir.

Q. How do the rates provided in Chapter 232 compare with the rates provided in the order of the Commission of December 14, 1906, which order of the Commission was necessarily superseded by Chapter 232?

A. I will have to answer, Mr. O'Brien, from my best memory,—

Q. Yes.

A. —which is, that the rates are about ten per cent higher than the rates prescribed in the Commission's order.

Q. That is, the rates prescribed by Chapter 232 are, upon an average, about ten per cent higher than the rates provided in the Commission's schedule according to its order of December 14th?

A. That is my best memory.

Mr. BUTLER: I wish you would just illustrate what he means by ten per cent higher, by taking, for instance, any arbitrary figure, like 9 cents on wheat; would it be 9.9 cents?

WITNESS: Well, Mr. Butler, our schedule of rates was

made in cents and mills, and if it were a 9-cent rate originally, and it was lifted or raised ten per cent you would take ten per cent of 9 cents and cast away the fractions of a mill, and give, I think, the company the benefit of the fraction; 4½ mills would be 5 mills; add about as close as possible ten per cent to the rate. I am not sure that ten per cent is right, but that is my memory; that is the idea I meant to convey.

Q. State whether or not, in so far as the schedule of rates prescribed by Chapter 232 is concerned, it follows, to all intents and purposes, the order of the Commission of December 14, 1906, except that the rates prescribed by the legislative act are as you have said, about ten per cent higher than those prescribed by the order.

A. When the legislative committee, in reviewing the question of rates, concluded to attempt to pass a commodity rate law, after it had been determined about how much higher the rates ought to be than those prescribed in the Commission's order, instruction was given to the clerks in our office to make a new schedule, taking the old schedule as a basis and lifting the rates a given per cent. (As I say, the fractions of a mill make a difference up and down, you can't figure that to a nicety.) I never checked those rates out personally. Those were the instructions. After that schedule of rates (the new schedule made upon the basis I have indicated here) was completed, it was simply furnished to the committee of the legislature as the schedule to be incorporated in their proposed act.

The MASTER: And was it so incorporated?

Q. Was it so incorporated?

A. As I understand it, it was. I say, personally, I never checked out that schedule of rates, and really know nothing about it more than I have indicated here.

Q. Now, the order of December 14, 1906, upon commodities, made by the Commission, was after the hearing and

consideration which you have already described?

A. Yes, sir.

Q. Between the making of that order and the passage of Chapter 232, passenger rates in the state were reduced?

A. By act of the legislature.

Q. By act of the legislature?

A. Yes, sir.

Q. And, following that, when it was proposed to enact a schedule for commodity rates, the order made by your Commission was used as you have described, and the rates somewhat increased?

A. Yes, sir.

Q. Do you know whether that was done because of the reduction in passenger rates?

A. I know that it was.

Q. Mr. Staples, there has been some discussion in this case, or evidence introduced, referring to distance tariffs, and, as I remember, some criticism upon distance tariffs as such. Will you please explain what a distance tariff is?

A. Yes, sir. A distance tariff might be made up on many different bases, but the significance of the term "distance tariff", for instance, if it be a maximum distance tariff, would be a tariff providing a specific rate as a maximum for a given number of miles. Now, the plan of building that tariff might vary materially, it depends entirely upon the ideas of the person building the tariff, but the principle is to increase the rate as the distance increases. You might make your number of turns, or your "jumps," I will call it, five miles, or you might make it ten, you might make it fifteen or twenty, or 100, if you please, and still it would be a distance tariff if it is built by increasing the rate as the distance increases.

Q. Is it not true that every tariff, of necessity, is more or less of a distance tariff?

A. Yes, sir, I think that any tariff has, as its basis, a dis-

tance tariff, or can be built into a distance tariff; a distance tariff can be made out of any tariff, I might say. There would be exceptions, perhaps, as rates upon certain commodities, but generally speaking.

Q. Where the distance tariff is inflexible, that is, fixing a flat charge for a certain number of miles, what is your judgment as to whether or not that is objectionable?

A. Do you mean what is commonly called "blanketing of rates"?

Q. No, I mean a distance tariff which is rigid, not flexible, a rigid distance tariff, prescribing both the minimum and maximum.

A. My judgment is that such a tariff is wholly impracticable.

Q. Why?

A. Why, I recognise many necessities for varying from the maximum provided in the tariff, many necessities for varying a rate for a given mileage.

Q. Can you illustrate that?

A. Why, yes sir, in this way: If two roads originating at a terminal have a common point beyond, and one carries a mileage of twenty miles, perhaps, less than the other, and desires to enter into the business at that common point, it certainly can do none of that busines if its rate is higher than that of the short-line road.

Q. So that that would be a case where competition might result in a lower rate for the same distance hauled than some other community equally distant received?

A. Yes, sir.

Q. And that is a discrimination in rates which has been generally recognized as being proper by commissions, including the Interstate Commerce Commission and the courts, has it not?

A. Yes, sir, and one which can be justified, in my opinion.

Q. So that you do think there is an objection to a distance tariff which is rigid?

A. Yes, sir.

Q. Now, is the tariff in controversy in this case of that character?

A. No, sir.

Q. The provision here is only for a maximum rate, is it?

A. Yes, sir.

Q. The constitution of the state of Minnesota, Mr. Staples, requires common carriers to carry the agricultural, mineral and manufactured products of this state upon equal and reasonable rates; I want to ask you whether or not equal and reasonable rates are always synonomous. It would be possible, would it not, Mr. Staples, to have equal rates in the state which were unreasonable?

A. Yes, I think it would.

The MASTER: Equal with reference to distance or mileage? I don't know that he quite catches the drift of your question.

Q. When I speak of equal rates I mean rates which are equal under all of the conditions—mileage, competition, character of service, and everything which enters into the making of a rate.

A. I so understood it, in its broad sense.

Q. And it might be possible that the aggregate revenue derived by a carrier from its rates would be a reasonable amount, and yet the separate rates from which that revenue was derived unequal?

A. I think so, yes sir.

Q. Is it, in your opinion, an important consideration, from the standpoint of the shippers and the public, that rates should be equal?

A. If you mean equal in the sense that you have described what you call equal rates, all matters to be considered as having a bearing upon the question, my answer would be yes.

Q. Well, of course I mean using that word in its broadest sense,—

A. Yes, sir.

Q. —and recognizing the fact that certain inequalities often arise from necessity or from peculiar conditions.

A. And can be justified.

Q. And can be justified; but that, in general, equality of rates is an important consideration?

A. I think so, yes sir.

Adjourned until Wednesday, February 17, at 10 o'clock, A. M.

FEDERAL BUILDING, St. Paul, Minn., Wednesday, February 17, 1909, the hearing was resumed at 10 o'clock A. M.

CHARLES F. STAPLES,
recalled on behalf of Defendants, testified:

By Mr. O'BRIEN:

Q. Mr. Staples, do you desire to make a slight correction of the record, this morning?

A. Yes, it occurred to me last evening that I had made a slight mistake, on page 2869 (of the transcript) where, in answering your question regarding the resolution which I read from the statute of 1905, I said "At the session of the legislature of 1905, a joint committee of the house and senate was appointed for the purpose of investigating the general rate question in the state, and before the close of the session that committee made the following report under date of April 6, 1905." I should have said that after that committee made its report, the legislature, under date of April 6, 1905, adopted the following resolution.

The MASTER: I understood it that way, but I noticed you

didn't say it quite that way. That is, I understood that was what you meant.

Q. Prior to September 6, 1906, were the rates charged by railroad companies in the state of Minnesota for the carriage of freight between stations in the state equal?

A. You refer now to all kinds of freight, generally?

Q. Yes.

A. No, I think the rates would not be regarded as equal, generally speaking, on a line of one road, but particularly they were unequal as between the different roads.

Q. Have you a table illustrating that condition?

A. I have prepared a table illustrating the different charges made by different roads upon first class merchandise, for given mileages.

Q. Well, have you prepared a table which illustrates the charges upon commodities found in Chapter 232, or caused to be prepared such a table?

A. Yes.

Witness produces statement, marked for identification, "Defts.' Ex. 3-D—Staples."

Q. Will you please explain 3-D—Staples?

A. Column 1 indicates the roads upon which comparisons are made; column 2 gives the key mileage, beginning with the fifty-mile haul and continuing with multiples of fifty up to four hundred miles; column 3 indicates a station, giving the nearest mileage to the mileage indicated in the key, found upon each of the roads indicated in column 1; triple-column 4 gives the rates on grain, beginning with flax, wheat and coarse grains; column 5 gives the rates on lumber; triple-column 6 gives the livestock rates, taking in cattle, hogs and sheep; column 7 indicates the miles from Duluth to the stations indicated or the stations from which the mileage was taken; triple-column 8 would cover the grain rates, flax, wheat and coarse grains to Duluth; and double-column 9 would cover the coal rates, hard

and soft coal, between Duluth and the point to which the shipment might be made. The balance of the sheet, to the right, is a continuation upon the same plan. It will be noted that under the designation "Northern Pacific Railway" is indicated Chapter 232, and, following out to the right, would be the rates prescribed in Chapter 232, put there for purposes of comparison.

Q. I observe that there are no comparisons given upon coal rates from the Minnesota Transfer.

A. That is due to the fact that this, not being a regular distributing point for coal, as a rule, there are no rates in.

Q. And I also observe that there are no comparisons as to livestock or lumber rates from Duluth.

A. Well, the livestock shipments to Duluth are a very inconsiderable quantity; the lumber shipments are large, but all shipments of lumber from Duluth to Twin Cities are made upon a fixed rate, which rate is arbitrary in the event the shipment goes forward beyond St. Paul upon another line.

Q. And the rate on lumber between Minnesota Transfer or the Twin Cities and Duluth is, I presume, much lower than the Commission's schedule?

A. Yes, sir.

Q. The transportation between Duluth and the Twin Cities is peculiar to itself, is it not?

A. Yes, it is regarded so by the companies, and by the Commission.

Q. Now, I call your attention to the first subdivision of Ex. 3-D. The first railway designated is the Chicago Great Western; the rate maintained upon that road for flax is 6.9 cents, wheat 8 cents, and coarse grain 7 cents per hundred pounds?

A. Yes, sir.

Q. The Chicago, Milwaukee & St. Paul Railway Company

maintains a rate upon flax of 6.9 cents, wheat 7 cents, and coarse grain 7 cents?

A. Yes, sir.

Q. The Omaha Road, flax 9 cents, wheat 7 cents and coarse grain 7 cents?

A. Yes, sir.

Q. The Rock Island, flax 8 cents, wheat 8 cents, coarse grain 7 cents?

A. Yes, sir.

Q. And then we find, upon the Great Northern, upon the Minneapolis & St. Louis and upon the Soo road, 6 cents for each of those three commodities?

A. Yes, sir.

Q. And, upon the Northern Pacific, 6½ cents for each of those commodities?

A. Yes, sir.

Q. The rating provided by Chapter 232 for a haul of fifty miles is, flax 5.7 cents, wheat 5.7 cents, and coarse grain 5 cents?

A. Yes, sir.

Q. I now call your attention to the haul of 100 miles, the second subdivision. It appears from this table that on that haul the Chicago Great Western charges the same rate upon flax and wheat of 10 cents per hundred pounds and 9 cents coarse grains?

A. Yes, sir.

Q. The same is true on the Milwaukee road?

A. Just the same.

Q. On the Northwestern the same rate, of 10 cents per one hundred pounds, is charged upon wheat, but only 8.7 cents per one hundred pounds for flax, and 9 cents for coarse grain?

A. Yes, sir.

Q. While upon the Omaha road the flax rate is 11.5 cents, wheat 9 cents and coarse grain 9 cents?

A. Yes, sir.

Q. On the Rock Island road the same rates are charged as upon the Great Western?

A. Yes, sir.

Q. The Great Northern rate is 7 cents upon each of the commodities?

A. Yes, sir.

Q. And the Soo and the Northern Pacific each charges 7.5 cents upon each of those commodities?

A. That is right.

Q. While the M. & St. L. charges 10 cents upon flax and wheat, and 8 cents upon coarse grain?

A. Yes, sir.

Q. The Commission's rate for a haul of that distance, flax 7.8 cents, wheat 7.8 cents, coarse grain 7 cents?

A. Yes, sir.

Q. It appears from this table that the roads in the northern part of the state maintained a much lower rate upon commodities than did the roads in the southern part of the state, that is, upon grain.

A. They averaged quite a little lower.

Q. And that the rates upon grain found in Chapter 232 are very slightly below the rates maintained by the three northern roads?

A. On the average they are.

Q. Is there, in your judgment, anything in the condition of the country tributary to the different railroads in Minnesota, or in the agricultural products tributary to the different roads, which would justify the great difference in rates upon the different roads on grain shown in this table?

A. If there was nothing but grain to transport within the state, I might say yes; considering the character of business within the state, I would say no.

Q. Have you made an investigation for the purpose of as-

certaining the amount of grain carried by the different roads?

A. Well, I have made an investigation, or caused a statement to be prepared, under my direction, showing the grain of different classes carried by the different roads. I have made such statement, but it does not include all of the roads of the state. It takes in the northern roads, so far as I have gone, and was made for the purpose of showing the volume of each kind of grain carried by those roads, covering a period of years from 1898 to 1908 inclusive.

Q. Will you give the result of your computation?

A. In the aggregate?

Mr. BUTLER: What is this, intrastate business?

WITNESS: No, Mr. Butler, this statement would comprise all the grain hauled into Minneapolis and Duluth. In the aggregate?

Q. Yes.

A. This is a comparative table, showing the grains hauled by the different roads to Minneapolis and Duluth, including corn, oats, rye and barley, the roads being the Great Northern, Northern Pacific and Soo, for eleven years, August 31, 1898, to August 31, 1908, inclusive. On the Great Northern road, wheat and flax is combined here: 780,685 cars, coarse grains, 140,488 cars, (18 per cent being coarse grains). I will say I did not figure these percentages myself. Northern Pacific Railway, 334,357 cars, wheat and flax; coarse grains, 45,041 cars, (13.4 per cent); Soo line, 128,550 cars, wheat and flax, coarse grain 12,309 cars, (9.5 per cent). Then I have this in detail if it is desired.

Q. Mr. Staples, could you ascertain the tonnage of the other roads?

A. Yes, sir.

Q. Only that portion of it that came to Minneapolis, or the total tonnage?

A. I couldn't give you, without a great deal of research,

the tonnage, except that hauled to any station in the state where we maintain the weighing and inspection of grain. But I might say that a large proportion of the grain in southern Minnesota goes south to Chicago and Milwaukee and we would know nothing of that from our records; it could only be obtained from the companies.

Q. You can, however, give the tonnage that comes to Minneapolis?

A. Yes.

Q. Or Duluth?

A. Yes, sir.

Q. Well, if you will do that.

A. Yes, I will have such a statement prepared for you.

Q. Now, I call your attention to the lumber rates shown in Ex. 3-D. In the first subdivision, I find the rates maintained on the different roads vary from 8 cents per one hundred pounds upon the Rock Island to 6 cents upon several of the roads, including the Northern Pacific, while the rate allowed by Chapter 232 for a haul of that distance is 6.5 cents?

A. Yes, sir.

Q. That in the second subdivision the variation is from 10 cents on the Chicago Great Western to 8.5 cents upon the Great Northern, and the prescribed rate is 9 cents?

A. Yes, sir.

Q. For a haul of 200 miles, it appears that the lumber rate varies from 13½ cents upon the Great Northern road to 9½ cents upon the Northern Pacific railway, while the prescribed rate is 11 cents?

A. Yes, sir.

Q. In livestock rates I find that on many of the roads the same rate is charged for cattle, hogs and sheep, while upon others of the roads a different rate is charged for hogs than that charged for cattle or for sheep.

A. Yes, sir.

Q. Do you know of any conditions which justify those differences in rates?

A. Of course, the minimums which may be observed by the different roads would be one influence, and the minimums do differ on different roads, or have, in the past; then the question of double-decking by some roads and not by others might influence the company in what rate it would make upon the sheep or hogs.

The MASTER: By minimum you mean the minimum carload lots?

WITNESS: The smallest amount permitted that they would haul a car for, the smallest weight whether the car contained the weight or not; if the minimum prescribed 24,000, the shipper would pay for 24,000 though he might have but 18,000 or 19,000 in the car.

The MASTER: Yes, that is what I was assuming.

WITNESS: If value should be considered by the carrier as a factor, that might perhaps be a reason for a difference in rates. In this prescribed legislative rate, the rate on cattle and sheep being the same, cattle and sheep in double-deck cars are the same. And it seems that wisdom, such as was used, dictated prescribing of the same rate upon cattle and double-deck sheep, and my memory is that hogs and single-deck sheep carried the 11-cent rate, and that being a higher rate on account of the fact that the car would carry a less weight.

Q. I did not intend to ask you, Mr. Staples, whether or not a different rate upon cattle and hogs was justified. Chapter 232 prescribes a rate for cattle and the same rate for sheep in double-deck cars, while a higher rate is prescribed for hogs and sheep in single-deck cars, for the reasons which you gave, I presume, in your last answer; but what I want to call your attention to is this: it appears from the table Ex. 3-D that, upon some of the roads mentioned there, the same rate was charged for cattle, hogs and sheep in double-deck cars; upon other

roads, notably the Great Northern, the same distinction was made between those classes of livestock as was made by Chapter 232, perhaps not in the same degree, but you will observe that cattle, in the first subdivision, are hauled at 8¾ cents, hogs 11¼ cents, sheep in double-deck cars 8¾ cents. Chapter 232 provides, for cattle, 9.8 cents; hogs, 11 cents; sheep, in double-deck cars, 9.8 cents; so that the relation that those classes bear to each other is not the same upon different roads. In addition to that, the cattle rates charged upon the different classes, are not the same upon the different roads, and I ask you whether or not there was anything in the situation of the roads or the product of cattle, hogs and sheep tributary to the different roads which, in your judgment, justified that discrimination.

A. No, I think not; but I ought to explain, perhaps, one of the reasons why it exists. Perhaps it was in 1903 or 1904 that a considerable reduction was made in the rates on livestock, particularly in the southern part of the state, and that was secured after several conferences with all the companies operating in the southern part of the state, at Chicago, with our Commission, and after securing certain concessions a further concession was made by getting the rate upon one of the classes, and I can't recall which one, reduced to the level of the other rates or the rates secured upon the other classes of livestock; thereby over a considerable portion of the line of the different roads, the same rate was put in. Now, I am not going to explain that it was done because it was thought the relationship was fair, but it was a concession made by the companies, and accepted by the Commission, in the general rate situation upon livestock; and I think that is largely the reason for those differences which you have described, wherein you find the relation of rates upon livestock in the northern and southern part of the state differ as they do.

Q. Then I understand, Mr. Staples, that at least some of

these discrepancies illustrate the result of the practice which you described yesterday of taking up one rate at a time upon one particular complaint and adjusting that rate?

A. One particular commodity, you might say.

Q. One particular commodity?

A. Yes, sir.

Q. And have been brought about, somewhat, at least, from the fact that neither the railroads nor the Commission ever considered the rates comprehensively?

A. That would be true, yes sir. I secured, in connection with my investigation of this question, some data upon the value of stock. I got, within a month, a statement on the shipment of a particular hundred cars; that is, I took one particular car for a given period of time and I found that the cattle averaged $720 in value; the sheep, single-deck, $423; sheep, double-deck, $780. There you get $720 for cattle, sheep double-deck $780. Mixed cars of stock, $732 in value. I got the average pounds that hogs weigh out at South St. Paul to be about 17,000 pounds; local cattle, about 20,000 pounds; western cattle, 22,000 to 24,000 pounds; sheep, single-deck, 12,000 pounds; sheep, double-deck, 24,000 pounds. Those figures were obtained merely for the purpose of knowing something of the value of these commodities and the weights which the different commodities carried upon which rates would be based. I didn't carry the matter any further, but got that for my own information.

Q. Is there any other matter in connection with this table to which you wish to call my attention?

A. No, sir.

Q. Mr. Staples, some evidence has been introduced in this case as to what has been called the interdependence or relation of rates, for the purpose of establishing the claim that any disturbance of the rates in Minnesota will necessarily disturb rates very largely outside of Minnesota in all contiguous states.

Will you please state whether or not, in your judgment, it is true that a general equality of, rates has been maintained throughout Minnesota, and the states contiguous to Minnesota, or that there is any such interdependence or absolute relation of rates as has been claimed?

A. I wouldn't wish to say there is no interdependence, but there is no absolute interdependence. I might answer that question in this way: The northern roads and the southern roads adopted a different course in making up their tariffs, when the merchandise tariff was put into effect. Of course, upon commodities there might be a different rule obtain, perhaps circumstances would compel a different rule; but we have, to the south, Iowa, for example, which has a considerably lower prescribed tariff or rates upon merchandise than Minnesota has now, and much lower than formerly obtained on the different roads in this state; and in the promulgating of the new tariffs under the Commission's order, the roads at the south made little or no change beyond the state line. I think when the tariffs were first put out, there wasn't a change, I don't think there is a change in more than three or four stations to-day, or half a dozen stations on all the lines together. That would not be true at the north. But as to the question of the rate which is observed in one state determining what the rate in another state shall be, particularly upon merchandise tariff, I do not think it has any foundation at all. I made a comparison, for the purpose of satisfying myself upon that question, showing the average per cent the Minnesota rates were higher than the Iowa rates. Now, this refers to the first class merchandise rate which obtained on the different roads in this state prior to the acceptance of the order of the Commission. I made up this statement in this way: I would take the prescribed rates which obtained in Iowa, and the actual rates in the tariff between given points for these distances in Minnesota, and I took, for instance, ten to twenty miles. Now, I

would take the ten-mile rate, the fifteen-mile rate and the twenty-mile rate upon the Great Northern road, and add those together, and I would take the same rates in Iowa, and then I would undertake to determine the percentage that the Minnesota rates were higher than the Iowa rates upon each of the different roads, taking the Iowa rate as the basis in every instance; and I found that, on the ten, fifteen and twenty-mile hauls in Minnesota, the Great Northern rates were 10¼ per cent lower; (when I say lower, I am using the Iowa rate as the basis), the Northern Pacific rates 15.62 per cent lower; the Soo rates 12.6 per cent lower; the Chicago Great Western, 20 per cent higher; the Milwaukee, 11.18 per cent lower; the Omaha, 8.12 per cent lower; the M. & St. L., 17.76 per cent lower. (I have the northern roads, the range roads, but I will not quote them.) Then I took miles 25 to 40, inclusive, and from this on, the rates all average higher on the Minnesota roads than the Iowa rates,—the Great Northern, 28.6 per cent; the Northern Pacific, 30.77 per cent; the Soo, 36 per cent; the Great Western, 39.7 per cent; the Milwaukee, 36 per cent; the Omaha, 20 per cent; the M. & St. L., 33.05 per cent; and I have those all up to 300 miles. I show an average upon the Great Northern of 46.73 per cent higher; upon the Northern Pacific of 43.50 per cent; upon the Soo road of 48.82; upon the Chicago Great Western of 44.03; upon the Milwaukee of 36.78; upon the Omaha of 34.22; and upon the M. & St. L. of 49.26. Those are the averages upon the different roads which the rates averaged higher, prior to the adoption of the Commission's schedule, than what the Iowa rates were at that time. I made this statement, as I say, for showing whether or not the Iowa rate really influenced the Minnesota rate.

Q. Now, what as to the interdependence or relation between state and interstate rates?

A. Well, it is not governing, but I would not wish to say that there is no relation and no interdependence one upon the

other, for I think there is somewhat. I don't think that it technically governs, by any means, but that is a factor that we have to lose sight of when you enter into the practical question.

Q. Well, can you illustrate what you mean by that as to whether there is the absolute dependence?

A. Well, I might give this illustration: Take the northern roads, their source of supply of coal is naturally Duluth and the northern ports, and very little coal from the south of us Illinois and Iowa, can and does reach the towns in the northern part of the state; and it would apear to me that they could maintain any rate which was not wholly unreasonable without affecting the rate from the southern part of the state or from Iowa or Ilinois upon coal. It is claimed by some of the roads, when figuring the loss which that would entail upon their road, any reduction made in the rates upon coal from the northern ports, (the lake ports) Duluth and Superior, particularly, that those rates must be met by the southern roads reaching Iowa and Illinois coalfields, and that all the shrinkage in the rating from Illinois and Iowa must be borne by the Minnesota roads. Now, in the first place, I don't think that it is necessary to shrink the rate to the same extent that the Minnesota rate is shrunk or reduced. The coal is an entirely different class of coal, it has no comparison with our coal so far as quality is concerned; our coal, coming from the eastern mines, is a very superior coal. And it has always appeared to me that if the rate had to be reduced somewhat, it could, perhaps, be divided between the coal-dealer if he found in competition he could not sell his coal as against the eastern coal, and I never could see any reason why, if the rate had to be reduced from the South, the connecting carrier from the South should not stand a portion of that rate if the haul was divided between two carriers; but I don't think the rate would necessarily have to be reduced unless the reduction was a very large one in Minnesota.

Q. What has been the custom with regard to the division of

through rates, as between different carriers; has that been done upon an arbitrary basis?

A. There is no rule; practically all the divisions are arbitrary, there is no rule governing the question of divisions. That is, when I say that, I mean that there is no rule which all of the roads observe when they undertake to make new joint tariffs. There is no prescribed rule. Take this illustration: The Milwaukee road may have upon its lines, large industries in the manufacture of brick, and the manufacturers desire to send them out over the state and on to other lines or to points on other lines; naturally, they go to the company to secure as low a rate as possible, and we will say they are going out to points on the M. & St. L., and the Milwaukee company goes to the M. & St. L. and wants to know, "What division will you give us upon these brick we will tender you at the Transfer?" The M. & St. L. may have large industries upon its own line manufacturing brick and don't want to take any of those brick, and they will say, "Why, we will give you 20 per cent." If they had no brick at all, they might say, "We will give you 50 per cent." It is a matter of compromise, a matter of deal between the companies. In a general way, there is a sort of fixed rule governing traffic which comes from the south, and this would refer more particularly to traffic coming from the East, (when I say "south", I mean Chicago and the East and from intervening points) traffic going north upon the northern lines, perhaps going to Duluth, there is a sort of general custom of dividing upon the basis of 65 per cent to the southern lines and 35 per cent to the northern lines. I don't mean to say that is an absolute rule, but that is a generally recognized division.

Q. Where is the point of division?

A. St. Paul. When I say St. Paul I always mean as well Minneapolis and the Transfer.

Q. Now, an illustration which has been used, frequently,

here as to the effect of these rates, is based upon the rate to Moorhead prescribed by Chapter 232 and the rate to Fargo as now maintained, and it is claimed that, in case the rate to Moorhead is changed, the rate to Fargo must be changed also. What have you to say to that?

A. Why, I would say, technically, of course, that couldn't be contended. But if I were making a rate upon the Northern Pacific road upon a commodity which was to be shipped to Moorhead, for instance, if I were making a terminal rate (as I believe our Commission has upon merchandise) into Moorhead, I would naturally know that if that company didn't observe that rate, or nearly so, at a point situated where Fargo is, the Fargo merchant—I wouldn't want to say would be put out of business, but his business would suffer.

Q. Can you imagine a rate which is fair to Moorhead being unfair to Fargo?

A. I don't know what you mean, Mr. O'Brien. Are you trying to have me select some particular commodity?

Q. Well, take merchandise generally. For instance, eliminating state lines from your mind, the question of state or interstate haul, if you should come to a conclusion as to what was a reasonable rate from the Twin Cities to Moorhead, would you consider that the same rate as applied to Fargo would be a fair rate?

A. Well, you said eliminating state lines?

Q. Yes.

A. Considering the location of those two places and the character of business they undertake to do and actually do, if there were any discrimination in the rate made, it would, in my judgment, be that Fargo should not take higher than the next mileage rate.

Q. They being only a distance of a mile apart?

A. Yes, sir. Now, if that distance was widened considerably, it might make a difference in my judgment. I answered

your question just as you put it.

Q. Now, under those circumstances, what consideration, in your judgment, is controlling in determining the rate from the Twin Cities to Moorhead?

A. Well, so far as the making of a rate to Moorhead is concerned, by a state authority, if you now refer to the authority making the rate outside of the company, only the questions would be considered which bore upon the question of whether the rate was reasonable in itself, and, of course, that takes into consideration all other rates.

Q. Let us assume that the rates fixed by the Commission and also the rates fixed by Chapter 232 to Moorhead are reasonable and just, in and of themselves, as applied to the traffic covered by those rates, do you know any ground upon which a higher rate than such rates to Moorhead can be justified, even although it appears that the interstate rate previously charged to Fargo was higher than the reasonable and just rate, so ascertained, to Moorhead?

A. No, sir, I did not.

Q. State whether or not, in your judgment, a railroad company is justified in charging an excessive rate within the state of Minnesota in order that it may maintain the same rate to points outside of Minnesota without regard to the question as to whether such outside rate is reasonable or otherwise, in and of itself.

A. I should have to say no, certainly.

Q. State whether or not, in your judgment, the inquiry must always be reduced to the question as to whether or not the prescribed rate is just, in and of itself, as applied to the traffic covered by it, under all the circumstances surrounding that traffic.

A. Well, Mr. O'Brien, I think you confine your question to a rather narrow sphere, and I would have to broaden my answer by saying this: that it often seems to be justified, or it at times

seems to be justified, that a lower rate, a particularly low rate, upon some commodity, is a reasonable rate to require, but in establishing that rate you necessarily must consider other rates, or revenue from other sources. In other words, I would answer your question yes, but you must always leave no room for doubt that the rates charged by the company generally will result in giving to the company the earning it is entitled to in the aggregate.

Q. Well, now, are you speaking of earnings from the transportation of freight of a similar character, subject to the same jurisdiction?

A. No; I may not be clear, and I may not have answered your question, but my intention was to show this, that a rate is not always made upon the basis that that rate itself is ample to bring to the company the earnings, (I will say) that it ought to have for the moving of that traffic if there were no other.

Q. Well, you know, Mr. Staples, that the Supreme Court of the United States has held that in establishing a scale of rates for a particular state, the authorities are not justified in taking into consideration the earnings from interstate business or the business in other states.

A. Yes, sir. My answer was confined to business within the state.

Q. Well, that is what I wanted you to say.

A. But intended to confine it to the business of the company within the state and not confine it to the shipment of coal or any one product.

Mr. BUTLER: Did you intend to confine it to intrastate business within the state and disregard the interstate business in the state?

WITNESS: Yes, sir.

Q. That is what I wanted you to explain, Mr. Staples, that

when you speak of considering other business you meant other—

A. I see your point clearly.

Q. —intrastate business.

A. That was in my mind. It must be apparent from my answer. I was confining my answer, however, to the business within the state and the business under the control or jurisdiction of the Commission.

Q. Your answer had particular reference to a rate upon one commodity?

A. Yes, sir.

Q. I was speaking more with reference to the establishment of rates, for instance, between St. Paul and Moorhead, generally, without reference to the rate upon a particular commodity.

A. My answer would be yes to that.

Q. In other words, Mr. Staples, could you justify the maintenance of an excessive rate to Moorhead in order that an existing rate to Fargo should be maintained?

A. No, sir.

Q. The rate to Moorhead must be determined, in and of itself?

A. Yes, sir.

Q. Otherwise the residents of Moorhead might be paying an excessive rate and the residents of Fargo might or might not be paying an excessive rate?

A. Yes, sir.

Q. Now, as a matter of fact, and as a practical question, it is rather difficult to see upon what theory a material difference in rates from St. Paul to points in western Minnesota and to points in eastern North Dakota can be justified, is it not, except as those points vary in distance?

A. Well, there might be other influences, the volume of traffic might be a factor; the matter of operation might be one

factor that would have more or less influence; but generally speaking, I should say that is true.

Q. The character of the country is very similar, is it not?

A. We regard it so, yes, sir. I simply said that might be a factor.

Q. If there was a difference in the cost of operation, if there was a difference in the density of the traffic, such considerations would possibly necessitate a difference in rates?

A. I think they would have a bearing—might have a bearing.

Q. The order of the Commission in controversy in this action establishes what are known as terminal rates, I believe?

A. Yes.

Q. And one provision of that order is to the effect that distance tariffs may be established which shall not be more than five per cent in excess of the terminal rates fixed in the Commission's order?

A. Yes, sir.

Q. Has it always been the custom of the roads to have both terminal and distance tariffs?

A. Generally speaking, yes; and I think all of the roads have maintained distance tariffs. It is understood that the distance tariff you refer to is the interterminal distance tariff; that is a tariff which prescribes a rate for a given number of miles upon the different classes, in merchandise, for example, and different commodities, which shall be observed by the agent when a shipment is made from one point to another neither of which is a terminal or distributing point.

Q. Let us take, for instance, the line of the Great Northern road. A shipment from Delano, upon the line of that road, to Darwin would be made under the distance rate?

A. Under the distance tariff rate, yes, sir.

Mr. BUTLER: Neither Delano nor Darwin being distributing centers or terminals?

WITNESS: Neither one being a distributing point or terminal. The rate for the number of miles would be applied; the prescribed rate for that number of miles would be applied to the traffic.

Q. Now, under the order of the Commission, to ascertain the rate which would be charged between those stations—The distance is 37 miles, I think?

A. Well, the rate prescribed in the schedule for forty miles, with the privilege of adding five per cent to that, would establish the rate to be applied to that shipment.

Q. From Delano to Darwin?

A. Yes, sir.

Q. What uniformity was there as to the practices maintained upon the different roads in the state in that respect prior to the order of the Commission?

A. I prepared a memorandum on that point, based a good deal upon the same plan as this comparison I have used with the Iowa merchandise rate, and this statement shows the percentage distance rates are higher than terminal rates and refers to the tariffs existing prior to the adoption of the rates prescribed in the order of September 6th, the rates which were being maintained on the different roads; the comparison is, as I say, taking the terminal rates which were being charged and finding how much their distance tariffs which they were maintaining were higher than their terminal rates. It is made up upon the same plan, taking the miles from ten to twenty-five. The Great Northern distance tariff was 3 1/3 per cent lower than its terminal tariff; the Northern Pacific, 6 2/3 per cent higher; the Soo Line, 12.12 per cent lower; the Great Western, 2.6 per cent lower; the Milwaukee, 8.7 per cent higher; the Omaha 23 per cent higher; the M. & St. L., 15.37 per cent higher: Now, I have that on 30 to 45 miles, 50 to 65, and so on, up to 300. I have not struck an average, but, take the Great

Northern road, for the different mileages it runs down, 4 per cent, 5½, 6.2, 6.2 and 3.6.

Q. All lower?

A. All higher; the distance tariff all higher. The first mileage was the only one where it is lower.

The MASTER: The terminal higher than the distance tariff?

Mr. O'BRIEN: In the first item only.

WITNESS: In the first 10 to 25 miles was the only place where that occurs. In all other cases of percentages indicated the distance tariff is that per cent higher.

Mr. BUTLER: Many per cent higher than the terminal tariffs which were governing at that time?

WITNESS: The Northern Pacific road, beginning with the 30 miles and running on down, is 4 per cent, 5½ per cent, 5, 4, 13; between 120 and 150 miles, it was 13.6 per cent.

Mr. BUTLER: Does that relate to the first class only, or all the classes?

WITNESS: This relates to the first class only, in all cases. 16 per cent, 11 per cent, 10 per cent; in one case 21.3 per cent. On the Great Western road, the tariffs were the same in all except two instances; in one it is 6 per cent and in the other 2.6 per cent lower. Otherwise they were the same. The Milwaukee is the same on certain mileages; on others it is 4 per cent higher and 7 per cent and 6 2/3 per cent and 11 per cent higher. In one case, 43 per cent higher, 32 per cent higher and 25 per cent higher. Other mileages, the M. & St. L. runs from 4 per cent higher to 13.55 per cent higher.

Q. In both the order of the Commission, establishing merchandise rates, and Chapter 232, prescribing commodity rates, the rate per ton mile allowed decreases as the distance increases; is that not true?

A. Yes, sir.

Q. Have you with you a table showing the terminal rates

upon any of the roads in the state established prior to September 6, 1906?

A. Yes, sir, upon first class merchandise.

Q. And does that table show a comparison of the terminal rates prescribed in the Commission's order with the terminal rates upon first class merchandise as established by the companies?

A. Yes, sir.

Witness produces statement, marked for indentification "Defts' Ex. 3-E—Staples," headed "Statement showing terminal rates on merchandise of first class in effect on railways named prior to the order of September 6, 1906, and rates as prescribed in that order."

Q. Will you please describe and explain this table?

A. The statement or table shows, what the heading indicates, beginning with miles 10 and carrying the rates up to 300 miles on first class merchandise, which were the rates being maintained by the Great Northern Railway, Northern Pacific Railway, Soo line, Chicago Great Western, Chicago Milwaukee & St. Paul, the Omaha line and the M. & St. L.; and, finally, the rates prescribed in the order of September 6th. These rates, upon first class merchandise, indicate fairly, so far as it was possible to do so, the rate which was charged by the different companies named for the mileage indicated.

Q. Now, I call your attention to the rate at 100 miles, on the Great Northern road. Will you please give the rates 100 miles on each of those roads, and the rate under the order of the Commission?

A. On the Great Northern, Northern Pacific and Soo line, the rate was 41 cents per hundred; Chicago Great Western, 37 cents; the Milwaukee line, 36 cents; the Omaha line, 32 cents; the M. & St. L., 40 cents; and, under the order of the Commission, it is 30.62.

Q. Please state how much was added to that amount where

the haul amounted to 200 miles, on such of the roads as had a haul of that length, and also how much was added by the order of the Commission. I want to know how much was added for instance, on the Great Northern road, to the 41-cent rate for a haul of 100 miles when the haul was really 200 miles.

A. 19 cents.

Q. Go on with each road.

A. Northern Pacific, 17 cents; Soo line, 16 cents; Milwaukee line, 8 cents; the Omaha line, 24 cents; under the order of the Commission it was 19.6 cents.

Q. Now, give the same information as to the addition from 200 to 300 miles.

A. The Great Northern road, 7 cents; Northern Pacific road, 9 cents; the Soo line, 10 cents. Those three are the only lines which reach fully 300 miles within the state. These are all mileages within the state. The difference between the amount added to the 200 miles haul, between that and 300 miles, under the order of the Commission is 9.8 cents.

Q. Now, please give the difference, or the amount, that is added from the haul of 230 miles to the haul of 300 miles.

A. On the different roads?

Q. Yes.

A. The Great Northern adds nothing; the Northern Pacific nothing; the Soo line nothing. Those three are the only lines that reach a mileage of 300 miles. Under the order of the Commission, 6.96 cents.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. Mr. Staples, I believe you want to make another correction in your testimony of yesterday, and before we take up another table this might be a good time to do that.

A. On page 2850 (transcript) the last answer I made was in answer to a question by the Master, reading "Prior to that

act, could they raise, as well as lower, the rate?" You recall the subject?

The MASTER: Yes.

WITNESS: And my answer was, yes; forgetting, for the moment, that, prior to that time, there had been a statute which prevented the raising of rates upon grain, coal, lumber and livestock, without the written consent of the Commission, but did not go so far as to interfere with the lowering of the rates upon those commodities.

Q. And did not refer to the class rates or merchandise?

A. Did not refer to the class rates, or any other.

The MASTER: What were the four commodities?

WITNESS: Grain, coal, lumber and livestock.

Q. There has been some testimony presented with reference to the relation established by the order of the Commission between the different classes of merchandise covered by that order; that is, that each class lower than the first class is a certain percentage of the first-class rate.

A. Yes, sir.

Q. Have you prepared a table showing the relation which each class of merchandise bore to the first class under the terminal rates established by the Northern Pacific and maintained prior to the order of the Commission?

A. Yes, sir.

Witness produces statement marked for identification "Defts.' Ex. 3-F—Staples."

Q. Ex. 3-F—Staples, being "Statement showing the percentage of relation which the different classes of merchandise bear to the first class as established by Northern Pacific Railway and as prescribed by order of Commission," reading horizontally across the page, the first line shows the percentage as established by order of the Commission?

A. Yes, sir.

Q. And that percentage in the Commission's order is main-

tained throughout the entire schedule?

A. Of rates, yes, sir.

Mr. BUTLER: The schedule and the order?

WITNESS: Yes.

Q. The first column gives the name of the station?

A. Yes, sir.

Q. The second column the mileage?

A. Yes, sir.

Q. The third column the class of merchandise?

A. And the rate between St. Paul and the station named.

The MASTER: The third double-column?

Mr. BUTLER: No, it gives the rate.

WITNESS: The third column gives the rate, on first-class merchandise, between St. Paul and the station named in the first column.

Q. The fourth column gives the percentage, taking first class as 100 per cent?

A. Yes.

Q. The other double-columns show as follows: The first, is the actual rate?

A. Yes.

Q. And the second, the percentage that that rate bears to the first-class rate for the same mileage?

A. Yes, sir.

Q. To illustrate, merchandise of the second class, in the schedule prepared by the Commission, is carried at 83½ per cent of merchandise of the first class?

A. Yes, sir.

Q. That percentage remains between those classes throughout the entire schedule.

A. Yes, sir.

Q. In the terminal tariffs of the Northern Pacific Railway, in force at and immediately before the adoption of the order of the Commission, the percentage which the second-class mer-

chandise bore to the first-class, varied from 83.33 per cent at Coon Creek, 13 miles from St. Paul, to 86.66 per cent at the station Becker, 46 miles from the terminal?

A. Yes, sir.

Q. In the third double-column, we find that the Commission's rate for merchandise of the third class is 66 2-3 per cent of the rate for merchandise of the first class?

A. Yes, sir.

Q. While the rates in force by the terminal tariffs of the Northern Pacific vary from 68.29 to 64.86?

A. Yes, sir.

Q. Will you please explain classes 5 and A?

A. Classes 5 and A cover carload shipments; and the percentages of fifth class and class A, carried by the companies, relating to the first-class rate, have been practically the same, very little, if any, difference being observed; that is, the percentage of class 5 rate to class 1, and the percentage of class A rate to class 1, have been practically the same for the same mileage, but the Commission has deviated from that, allowing a five per cent higher rate for class A than for class 5. The only explanation for that is the character of freight that generally comes under class A, being freight which does not weigh, which would not carry the same minimum that class 5 would, and, in the opinion of the Commission, (and I think traffic men rather endorse it) it is fair to allow a little higher rate than for class 5.

Q. That is, as I understand it, that a carload of freight of class A would not weigh as much as a carload of freight of class 5?

A. As a rule, the idea is that you could not load into the car of class A the same weight of freight, that you could ordinarily, coming under class 5. I am not, just now, prepared to indicate these different articles, but that is the conclusion of the Commission, and that is the basis for it,—that, to be fair

to the companies, they ought to have a little higher rate. Mr Yapp suggests (which is timely), that under class 5 you would find such articles as perhaps vinegar, molasses, sugar, and excessively heavy commodities, whereas, under class A, you would find, perhaps, machinery, (certain classes,) wagons and that class, which would weigh lighter in the same cubical contents.

Q. All of the rates shown upon Ex. 3-F are the rates which were actually in force?

A. Yes, sir, to the stations named; and the mileage is the actual mileage.

Mr. BUTLER: These are the rates that have been made under the order?

Mr. O'BRIEN: Oh, no.

WITNESS: No.

Mr. BUTLER: Prior to the order?

WITNESS: Yes, sir.

The MASTER: This whole table is a table of rates in force prior to the action of the Commission?

WITNESS: Yes, sir.

Mr. O'BRIEN: The object of this table is to show how much the order of the Commission, in establishing the percentage of relation between different classes, varied from the percentage of relation established by the Northern Pacific Road itself, prior to the making of that order. The first line simply states the percentage found in the Commission's schedule as to each class of merchandise; all of the balance of the table beneath that first line is a reproduction of the rates in force upon the Northern Pacific road prior to the making of the order, placed in double-columns, in which the actual rate is first shown and the percentage which that rate bore to the first class rates; our claim being that, in preparing this schedule, the Commission followed as far as possible the established practice of the railroad companies, endeavoring to eliminate discrepancies and

discriminations, but following as closely as possible the rates under which the companies were actually operating.

The MASTER: The same principle obtained with them as had obtained with the railway companies?

Mr. O'BRIEN: Yes, sir.

Q. Mr. Staples, I think I had better ask you whether that statement I have just made upon the record is true as to what this table shows.

A. Yes, sir, except that the purpose was not to follow the rates but the relation of the rates after first class to the first-class rate.

Q. Now, in order that there may be no misunderstanding with regard to Ex. 3-F, I will ask you whether or not the rates shown upon that table are the rates which were actually in force as terminal rates upon the Northern Pacific road at the time of the making of the Commission's order.

A. Yes, sir.

The MASTER: I think you mentioned the Great Northern, didn't you, back in your testimony,—was that an inadvertence?

WITNESS: Well, both lines reach Coon Creek. Perhaps I should have said the Northern Pacific, but both lines reach there.

Q. This table refers exclusively to the Northern Pacific rates?

A. Northern Pacific rates, that is right.

Q. The percentages appearing and following each rate shown upon this table are simply the actual percentages which the rates shown bear to the first class rates as computed under your direction?

A. That is right, the companies themselves carry no schedule of percentage relation, but the percentages shown upon this statement are worked out by our own force, simply deter-

mining what percentage the actual rate does, or did bear, to the first-class rate.

The MASTER: And showing a very marked similarity to the percentages you adopted?

WITNESS: Yes, sir.

Q. Now, what was the situation with reference to this same matter upon the other roads in the state?

A. In order to enable the Commission to determine what the relationship should be, in its opinion, we treated each road in the state in the same way, made up a statement in exactly the same way, and found what relation all rates after the first class rate bore to the first class rate upon the different roads; and while I have not prepared an exhibit showing that, I have the data made up here, upon the same basis, covering nine of the principal roads in the state. In a general way, I think I can say that the percentages finally adopted by the Commission of the second and lower rates to the first-class rate are very close to the average percentages, not only of all the roads, but of the different roads, they run fairly close. I will give the average percentages, without going into detail, of the Great Northern, taking from 14 to 200 miles. You have, on the statement, our relation, and I will read you their average relation. Second class, 85.34 per cent; third class, 66.02 per cent; fourth class, 50.84 per cent; fifth class, 39.79 per cent; class A, 39.69 per cent; class B, 34.78 per cent; class C, 30.39 per cent; class D, 23.85 per cent; class E, 19.61 per cent. Of course, they differ somewhat on different mileages, like the Northern Pacific did, but the differences are not wide enough to be commented upon. The Soo line is very close to that of the Great Northern in its average. The Minneapolis & St. Louis, I will read: second class, 83.96 per cent; third class, 65.27 per cent; fourth class, 49.15 per cent; fifth class, 38.30 per cent; class A, 41.01 per cent; class B, 36.55 per cent; class C, 30.76 per cent; class D, 26.29 per cent; class E, 20.49 per cent. Then I have the

Chicago, St. Paul, Minneapolis & Omaha, the Chicago, Milwaukee & St. Paul, the Chicago Great Western and the Northwestern, made up upon the same basis.

Q. Your statement as to their generally agreeing applies to those roads?

A. Well, very closely, yes, sir. In all cases, I might say, they carry practically the same relation between the fifth class and class A. That custom has been uniform upon all roads—which I have explained where we make the change.

Q. You have these tables prepared, you say, Mr. Staples, that you are reading from here?

A. Yes, sir.

Q. And, of course, we would be glad to have the counsel inspect them, if they desire?

A. Certainly.

Q. You said, this morning, that the conditions between the Twin Cities and Duluth were peculiar to themselves.

A. Yes, sir.

Q. What did you mean by that?

A. Well, I had in mind this: We have at St. Paul, (and that comprises Minneapolis and the Transfer) coming direct from Chicago, the Chicago, Milwaukee & St. Paul, the Minneapolis & St. Louis, the Chicago & Northwestern, (the Omaha company and the Northwestern system we class as one), the Wisconsin Central, the Chicago, Burlington & Quincy, the Chicago, Rock Island & Pacific, and the Chicago Great Western; they are all in competition for through freight, either from Chicago and eastern points, or *vice versa*. Then we have, particularly, the Northern Pacific and the Great Northern roads, in competition for a large amount of the same kinds of freight, destined to or from the same points, including Chicago, taking in eastern points, and much of the freight which is destined, even to Duluth, comes by rail from the East to St. Paul and goes to Duluth over one or the other of those lines. Of course,

the Omaha is in competition with them, also; but, to give an illustration, we had a complaint, awhile ago, about the rate on cement from Chicago to Northfield, which was based upon the fact that the rate at Northfield was ten cents and the rate to St. Paul and Minneapolis was eight cents. This cement was hauled to Northfield by the Chicago & Rock Island Railway Company. While this was an interstate shipment, we check up all of those complaints and endeavor to adjust them, if we can, and, in looking this matter up, I found that the Chicago, & Rock Island Road charged, on cement, 8 cents a hundred. After getting out of Chicago about 100 miles, it seems to me, the rate reached the 8-cent point, and they carried that flat rate up to and including Inver Grove, just south of the city of St. Paul, but, coming into St. Paul, the rate was dropped to eight cents, and, of course, the same rate was given Minneapolis and the Transfer; and the only explanation that I could get (and I went to the officers of the company at Chicago) was that they were obliged to meet the rate on cement to St. Paul *via* the lakes to Duluth and from there to St. Paul by one of the lake-carrying lines. And I think that statement is true, they do have to meet that rate, and that is just one illustration that I give to indicate that the locations of St. Paul, Minneapolis and Duluth are peculiar to themselves, there is an interchange of business coming either way which makes it necessary. Though the mileage is very different, the rate upon certain commodities must be met or else one or the other of the lines must go out of the business.

Q. Have any of the rates between Duluth and the Twin Cities which were in force prior to the making of the Commission's order been changed by that order?

A. I think not.

Q. Are you able to state whether or not the rates upon merchandise between the Twin Cities and Duluth are lower than the schedule of rates provided in the Commission's order?

A. I think they are. I have not looked that up for some time, but that is my memory, that they are all lower.

Q. Would the enforcement of Chapter 232, with regard to the commodity rates change any rates in force between Duluth and the Twin Cities?

A. I am not sure about the livestock rate, but the coal rates would reduce the hard-coal rate five cents per ton, and the soft-coal rate would be increased by two cents per ton. The livestock shipped between the points indicated is of very small amount, but whether the rate would be changed I can't say just now, I have forgotten.

Q. Have you endeavored to ascertain the comparative amount of tonnage between Duluth and the Twin Cities, Duluth and other parts of the state, and the Twin Cities and other parts of the state?

A. Yes; I have had a memorandum prepared which throws some light upon that question. It was done hastily; it occurred to me at a very late hour, and I will say that the basis of this memorandum is the result of an investigation made by our department, which covers the entire business done by the Northern Pacific Company in all parts of the state, but this statement is confined to the business done particularly between the Twin Cities and Duluth, including Superior; between Duluth (including Superior) and state points, exclusive of the Twin Cities, and between the Twin Cities and state points, exclusive of Duluth and Superior, and covers a period of two months,—the months of October and April, 1907, being taken as typical and fairly representative months upon which to base a comparison. This statement shows that there moved between the Twin Cities and Duluth (and when I say Duluth I mean, every time, to include Superior), during the months named, 416 cars, being 12,029 tons, of lumber, lath, shingles, etc.; between the same points, of cattle there moved eight cars, 86 tons; of hogs and sheep, two cars, 20 tons; hard coal, 925

cars, 27,603 tons; soft coal, 1,210 cars, 39,736 tons; wheat, 320 cars, 8,773 tons; coarse grain, 215 cars, 5,163 tons. Between Duluth and state points, exclusive of the Twin Cities, lumber, lath and shingles 318 cars 7,571 tons; cattle, 25 cars, 301 tons; hogs and sheep, 17 cars, 188 tons; hard coal, 345 cars, 10,413 tons; soft coal, 1,604 cars, 51,638 tons; wheat, 389 cars, 12,530 tons; coarse grain, 203 cars, 5,954 tons. There moved between the Twin Cities and state points, exclusive of Duluth and Superior, lumber, 656 cars, 17,122 tons; cattle, 108 cars, 1,270 tons; hogs and sheep, 119 cars, 1,374 tons; hard coal, none; soft coal, 4 cars, 147 tons; wheat, 293 cars, 7,373 tons; coarse grain, 320 cars, 6,038 tons. I have the figures, above, indicating which way this tonnage moved, but I take it that that may not be of value, the statement covering the class tonnage.

Q. By class tonnage you mean the merchandise tonnage, classified?

A. The merchandise tonnage, classified.

Q. And covered by the Commission's order?

A. And covered by the Commission's order. It is not as complete as this first statement, it only covers the month of April.

Q. It is not segregated?

A. It is not segregated, and I had no intention of using it.

Q. Are you prepared, now, to give the percentage relation of rates upon the Milwaukee road as requested by counsel?

A. Yes, sir.

Q. You may do that now, then.

A. The station of Good Thunder, on the Milwaukee road, is 99 miles distant. The first-class rate was 42 cents prior to the order of the Commission; that is the basing rate, being 100 per cent. The second-class rate was 34 cents, the relation being 80.95 per cent. The third-class rate was 25 cents, the relation to the first class being 59.52 per cent. The fourth-class rate, 19 cents, the relation being 45.24 per cent. The

fifth-class rate, 15 cents, the relation being 35.72 per cent. Class A, 16 cents, the relation being 38.09 per cent. Class B, the rate is 14 cents, the percentage relation 33.33 per cent. Class C, the rate is 13 cents, the percentage relation is 30.95 per cent. Class D, the rate is 11 cents, the relation is 26.19 per cent. Class E, the rate is eight cents, the percentage relation is 19.05 per cent.

By Mr. BUTLER:

Q. What is the next point that you have on the Milwaukee, and the distance from the Twin Cities?

A. Lamoille, 112 miles.

Q. That would correspond nearly to Swanville, on the Northern Pacific, exactly the same.

A. The first-class rate was 38 cents, second-class rate 33 cents, the percentage relation 86.84 per cent; the third-class rate 25 cents, the percentage relation 65.79 per cent; fourth class 18 cents, percentage relation 47.37 per cent. The fifth class rate, 12½ cents, the relation 32.9 per cent. Class A, 15 cents, the relation 39.47 per cent. Class B, 13 cents is the rate, the relation, 34.21 per cent. Class C, the rate is 11 cents, the relation is 28.95 per cent. Class D, the rate is 10 cents, the relation is 26.32 per cent. Class E, the rate is 8 cents, the relation is 21.05 per cent.

Q. Suppose you take a point, now, 199 miles, which would correspond about, to Corona, on the Northern Pacific.

A. We find the station of Lakefield, and the first class rate is 44 cents, the second class rate 37 cents; the relation to the first class is 84.09 per cent. The third class rate is 27 cents, the percentage relation, 61.36 per cent. The fourth class rate, 20 cents, the percentage relation, 45.45 per cent. The fifth class rate, 17 cents, the percentage relation 38.64 per cent. Class A, 19 cents, the percentage relation, 43.18 per cent. Class B, the rate is 17 cents, the relation is 38.64 per cent. Class C, the rate is 15 cents, the percentage relation, 34.09 per

cent. Class D, the rate is 13 cents, the percentage relation is 29.59 per cent. Class E, the rate is 10 cents, the percentage relation is 22.73 per cent.

Q. Can you tell whether or not your Ex. 3-E as far as respects the Milwaukee road, took the tariffs along the line of the Milwaukee road from which you have now been giving the information asked for, or whether it was on some other line of the Milwaukee road?

A. I can't answer that.

Q. Ex. 3-E shows that at 150 miles the Milwaukee road took a rate of 49 cents; what is the rate at 150 miles, at Hayward, on the Milwaukee road?

A. 38 cents.

Q. So it is evident, is it not, that Ex. 3-E, as far as relates to the Milwaukee road, was taken from some other line?

A. That is apparent.

Q. And then, again, you will observe that the Milwaukee road, according to Ex. 3-E shows a rate of 44 cents for first class and the Commission's rate is 50.22 per cent (a good deal higher), and you have, on the paper before you, the Commission's rates, in red ink, and they do not, as a rule, raise the Milwaukee rates at the points you have referred to, do they?

A. No, they do not.

Q. It might be well to make it appear, now, how many branches or different lines of the Milwaukee road out of the Twin Cities there are into different parts of the state. There is one down the river, one down to Northfield and Austin, then there is the Hastings & Dakota, which make three; are there any others? (No answer.)

Q. Which one is this you have been looking at,—is that the Hastings & Dakota? Then there is one to Mankato and Wells, which make four. Now, are there any others?

A. I don't recall them, Mr. Butler, if there are.

Q. Good Thunder is on the one that runs through Man-

kato? it is in Blue Earth county, I think.

A. Yes, I think it is.

By Mr. O'BRIEN:

Q. Neither the order of the Commission in controversy in this case, nor Chapter 232 establishes any joint through rates?

A. No, sir.

Q. In Mr. Tittemore's testimony, as I remember, it was claimed by him that the Milwaukee Road, having the shorter haul from Duluth to junction points between it and the Minneapolis & St. Louis Road, the rate fixed by Chapter 232 upon coal would be based, of necessity, by the Milwaukee Road, upon a continuous mileage from Duluth to such junction points; that it would be necessary for the Minneapolis & St. Louis road to meet that rate at those points and that the roads extending from Duluth to the Transfer had either notified him that they would insist, or that they had insisted, upon receiving the present rate from Duluth to the Transfer and that, therefore, the entire loss or reduction in the rate would fall upon the Minneapolis & St. Louis Road. What have you to say with reference to that?

A. Mr. Tittemore, in presenting his testimony, in which he shows the loss to be sustained by the Minneapolis & St. Louis Railroad Company from the enforcement of the commodity rates prescribed in Chapter 232 General Laws of 1907, as I understand his testimony, claimed that the Minneapolis & St. Louis Road, having no line from St. Paul to the Head of the Lakes, is obliged to receive all its supply of coal coming from the Head of the Lakes at St. Paul from one or another of the carriers operating between St. Paul and the Head of the Lakes; and that, inasmuch as the Chicago, Milwaukee & St. Paul Railway Company has a line through from the Head of the Lakes to St. Paul and from St. Paul thence running west across the state and paralleling and running close to the Minneapolis & St. Louis road all the way, even crossing it at Norwood, thus

making it competitive, and that the enforcement of the rates upon the Milwaukee Road would compel their adoption by the Minneapolis & St. Louis Road and that of such through rates the road operating from Duluth to St. Paul would demand its full local rate for the mileage hauled and that any reduction made from the present through rate would, therefore, have to be borne entirely by the Minneapolis & St. Louis Road,—for example, the distance from Duluth to Norwood *via* the Milwaukee road is 197.4 miles, the rate on hard coal for that distance, as prescribed in Chapter 232, is $1.44 per ton; the distance from Duluth to St. Paul *via* the Northern Pacific road, is 151 miles, the rate under Chapter 232 for that distance is $1.20 per ton; the distance from St. Paul to Norwood *via* the Minneapolis & St. Louis road, is 51 miles; the present rate on hard coal from Duluth to Norwood is $1.80 per ton; the difference between the present rate and the rate prescribed in Chapter 232 is 36 cents per ton, and Mr. Tittemore's claim is that, as the Northern Pacific Company would exact its full local rate of $1.20 per ton, as I understood him, and the new through rate is $1.44 per ton, the amount left to the M. & St. L., for its haul from St. Paul to Norwood, would be but 24 cents as against its former rate of 80 cents, thus entailing a loss to his company of 56 cents per ton. The Minneapolis & St. Louis Company, under the present rates, receives 80 cents per ton on hard coal from Duluth to Norwood, while under the rate prescribed by Chapter 232 they would receive 44 cents, allowing to the Northern Pacific Company its present arbitrary of $1 per ton, thus causing a loss to the M. & St. L. company of 36 cents per ton. Under the present schedule of joint rates on coal between the Northern Pacific Company and the Minneapolis & St. Louis Company, the Northern Pacific Company exacts an arbitrary rate of $1 per ton on hard coal and 75 cents per ton on soft coal, but it cannot be assumed that the Northern Pacific Company would demand these arbitraries in the event of a reduc-

tion in the through rates. This claim entirely ignores the fact that the Commission is vested with power to establish through joint rates and the bases of division of the same between the different carriers. No doubt Mr. Tittemore has forgotten this, for I recall distinctly his calling upon the Commission, when the former adjustment of coal rates was effected, and saying that his company was experiencing considerable difficulty in securing a fair division of the through rates with the carriers from the Head of the Lakes, and that he might have to ask the Commission to establish the divisions. The statute conferring this authority upon the Commission has been sustained by the Supreme Court of the United States in the case of the Minneapolis & St. Louis Road vs. Minnesota, 186 U. S., p. 257, so that any assumption that a road moving the coal from Duluth to St. Paul, where the coal is destined to a point beyond, would be permitted to charge as its proportion of the through rate its full local rate, is not well taken. All divisions of through joint rates are more or less arbitrary, depending much upon the conditions, commodities shipped, and traffic agreements. In this connection, it seems pertinent and proper, both bearing upon the rate itself and the division of a joint rate, to refer to a contract existing between the Chicago, Milwaukee & St. Paul Company and the Northern Pacific Company, which was entered into on the 1st day of October, 1900, has been in full force and effect ever since, and, by its terms, is to continue in force until January 1, 1999. In this contract will be found two bases for a division of through joint rates, and I will quote from the contract itself, reading Section 3 of Article 1. Section 3 reads:

"It is mutually understood and agreed, by and between the Pacific Company and the St. Paul Company, that the through rates aforesaid shall be divided between said companies upon the basis of a prorata per local rate after deducting such proportions of such through rates as are due to other lines, and

that, for the purpose aforesaid, each of said companies shall at once file with the auditor of the other its local tariffs in effect October 1, 1900, and shall likewise, from time to time hereafter, when new tariffs are issued in any wise affecting this agreement, immediately file, as aforesaid, copies of such tariffs, and said auditors shall prepare a table of divisions which will insure to the Pacific Company and to the St. Paul Company a prorate per local rate of the revenue derived by them jointly from the business done under this agreement; provided, however, that nothing herein contained shall be construed as authorizing the deduction before division of any switching charges, such charges being declared not to be proportions due to other lines but an expense to be borne by the St. Paul Company; provided, also, that the Pacific Company shall make no switching or trackage charge against joint traffic for its own services."

In connection with this section, I want to say that, in Section 2, from which I will quote four lines, it is provided, "And the St. Paul Company may, at all times, during the continuance hereof, fix the through rates on any and all of the aforesaid traffic, and publish its own tariffs therefor," with the proviso "that such through rates shall, in no case, be less than the local rates" of the Northern Pacific between the Head of the Lakes and St. Paul. Section 3, as read, indicates one method or basis for a division of joint rates. Section 4 reads,—(and in reading Section 4 I want to say that this would and does affect the coal rates.)

"It is further mutually understood and agreed, by and between the said last named companies, that, for the purposes of this contract, three cents per hundred pounds shall be deemed and taken to be the local rate of the Pacific Company between St. Paul and Minneapolis and the Head of the Lakes on all grain, grain products, flaxseed and lumber in carloads, and on coal in carlots if loaded in box-cars or in open cars, under the

conditions specified in Section 6, and that for the purpose of establishing a basis for division of through rates on coal, the tariffs first established by the St. Paul Company from the Head of the Lakes shall be construed as based upon a local rate of three cents per hundred pounds to the Northern Pacific Company, the percentages thereby established being used for the division of all future rates; and, except as hereinafter otherwise provided, the Pacific Company's proportion of the through rates made by the St. Paul Company upon any of the above enumerated articles, shall not, at any time, be more than three cents nor less than two cents per hundred pounds."

Section 4 of this contract not only makes it clear that the division of a joint rate need not be based upon the prorate per local rate but, also, if it is held that a rate of $1.20 per ton is sufficient for hauling hard coal from the Head of the Lakes to St. Paul as a local rate, then the same road would be entitled to a less sum as its division of a through rate made for hauling to St. Paul a ton of coal destined to a point beyond on the line of another road. Of course, the enforcement of the rates prescribed in Chapter 232 will cause some reduction in rates, but, where two or more roads are involved in the haul, the loss in revenue will have to be borne by the different roads on some fair basis. In the case above cited, if the through rate of $1.44, prescribed in Chapter 232, for hauling a ton of hard coal from Duluth to Norwood by the Northern Pacific Company or from Duluth to St. Paul and by the Minneapolis & St. Louis Company from St. Paul to Norwood, were to be divided on the basis provided in Section 4 of the contract between the Northern Pacific Company and the Milwaukee Company, it would result in giving to the Northern Pacific Company as its division no more than 60 cents per ton and to the Minneapolis & St. Louis Company at least 84 cents per ton, which would be 4 cents more than it now receives as its division under the present rates. But it is not necessary to go that far. I do not contend that if

the present rate of $1.80 is to be reduced to $1.44, the Minneapolis & St. Louis Road should continue to receive its present division of 80 cents, but if it should and the balance of the rate, 64 cents, was to go to the Northern Pacific Company, that company would receive a much larger revenue than it now receives under its contract with the Milwaukee Company for hauling hard coal.

Adjourned until the morning of Thursday, February 18th.

FEDERAL BUILDING, St. Paul, Minn., Monday, February 22, 1909, the hearing was resumed at 10 o'clock A. M.

CHARLES F. STAPLES,

Recalled on behalf of Defendants, testified:

By Mr. O'BRIEN:

Q. Mr. Staples, I desire to call your attention to the testimony which has been introduced showing that, during recent years, wages of employes of railroad companies have increased considerably, and that the prices of materials entering into the construction, maintenance and use of equipment of roads, have also increased. Do you understand that to be the fact?

A. Yes, sir—there is no doubt that is the fact.

Q. Can you state whether or not great economies in the method of transportation have come into existence, at the same time?

A. Yes, sir. The companies are constantly striving to reduce the cost of moving traffic, and, as time goes on, have introduced and employed different ways to reduce the cost of moving traffic.

Q. Won't you describe that, in detail?

A. One of the means, is the more systematic arrangement for collecting traffic and bringing it together at the different operating divisions which handle it; but the most significant

and important feature is the reduction of grades, the equipping of the line with better rails, putting the line in very much better condition in the way of gravel, more substantial bridges, and different ways which enable the companies to handle a very much heavier class of equipment, heavier power, for instance, cars of very much greater capacity. Of course, before they can do that, it is necessary that the roads shall be put in condition to carry this heavier equipment, which means heavier tonnage. As I say, the reduction of grades is a very important factor. When I say reduction I mean such a revision as reduces grades,—for instance, the Northern Pacific has now about completed one stretch of road, composing twenty-seven miles—I can't just name the points, I ought to—

Mr. BUTLER: That is in Minnesota in the Red river valley?

WITNESS: That is in Minnesota.

Mr. HOW: Wadena to Glyndon.

WITNESS: Thank you, that is right, Mr. How. Glyndon is one point; whether Wadena is the next—

Mr. How: Wadena, I think.

WITNESS: I think that Wadena is east of the point I had in mind; perhaps Lake Park is the point.

Mr. How: Lake Park, that is right.

WITNESS: Between Glyndon and Lake Park, I believe, is just twenty-seven miles. The maximum grade, as I recall it, on that twenty-seven miles, has been one per cent—perhaps a little more than that at one or two points—and it has, for years, in handling the heavy tonnage over that division, been necessary to maintain extra engines, called helping engines, at different points. I think they maintained two crews at Winnipeg Junction, and, practically the entire business of those crews was to help the trains up those grades. Now, they have about completed there, at very great expense, a revision of grade which gives them a uniform three-tenths of one per cent grade for those twenty-seven miles. Now, there is more

mileage where the grade is being revised, but I am giving this one illustration. That is going to enable the Company to eliminate these helping engines and enable the regular trains to carry their maximum tonnage over that grade without any assistance. That is one illustration, and, of course, while I am not able to give others specifically, they would be of like character except that that is one involving an enormous expense and is perhaps the best illustration in the state that could be given.

Q. Well, has that work of improving the roadbed and the grades been going on for years?

A. Yes, sir; not only on the Northern Pacific, but all the roads are doing more or less of that work.

Q. But there has been a great deal of it done in this state on the Northern Pacific?

A. Yes, sir; they have paid out enormous sums of money, within ten years, and particularly within five years.

Q. During the past ten years, what change has come with regard to the locomotives in use?

A. Well, I can't answer that question technically. I know, from personal inquiry, and from the testimony of competent witnesses employed by the companies who have testified before our Commission, that the tendency is constantly to increase the carrying power of an engine. I will not undertake to give what that is, either in a percentage way or otherwise, but I know that to be a fact.

Q. How with reference to the capacity of the box-cars?

A. Well, I wanted to get some information on that subject, particularly with reference to the Northern Pacific, and I took two ways to do it. I had prepared, by one of the clerks, a tabulation made from the railway equipment record of the Northern Pacific. Now, that is supplied us by the Company itself, and this statement comprises the years between 1898 and 1908, and is simply a transcript of their record; showing,

first column, the year, second column, number of cars owned, third column, total capacity in tons, fourth column, the average capacity per car in tons. I would give the average capacity as the best illustration. I ought, however, to give something with reference to the number of cars on which it is based. In 1898, the number of cars owned, was 18,477. Leaving off the odd figures and giving the thousands or the closest to the thousands, in 1899, it was 20,500; in 1900, 21,400; 1901, 26,700; 1902, 30,900; 1903, 32,000; 1904, 32,200; 1905, 35,100; 1906, 36,000; 1907, 42,000; 1908, 42,000 odd. That represents the number of cars, practically. Now, the average capacity of those cars was, for 1898, 21.6 tons; 1899, 23.49 tons; 1900, 24.56 tons; 1901, 25.95 tons; 1902, 27.41 tons; 1903, 28.23 tons; 1904, 28.46 tons. It will be noted that in 1903 and 1904 the number of cars is nearly the same. 1905, 29.88 tons; 1906, 31.34 tons; 1907, 33.61 tons; 1908, 34.12 tons. Perhaps that is enough in detail of that. I didn't intend that as an exhibit, but have several copies.

Q. Let me sum that up: The number of cars, in round numbers, increased from 18,000 in 1898 to 42,000 in 1908?

A. Yes, sir.

Q. And the average capacity of each car increased from 21.6 tons in 1898 to 34.12 tons in 1908?

A. Yes, sir. I took, as a second means of finding the carrying capacity of the cars, first, the total number of cars of grain, of all kinds, delivered at Minneapolis, by the Northern Pacific Company. This statement is made up from the records of our grain department, it being understood that we weigh all the grain which is delivered either at Minneapolis or Duluth, in behalf of all parties. The railway companies settle their freight bills upon our weights; they adjust all claims upon our weights; the seller sells his grain upon our weights, and the buyer buys it upon our weights. I simply speak of that to indicate the accuracy of these figures, and these figures

are made up from the official records of our department.

Witness produces statement, marked "Defts' Ex. 3-G—Staples."

Q. "Statement showing number of cars weighed at Minneapolis, and average number of pounds per car of wheat, oats, corn, rye, barley and flax, for the years ending August 31, 1890, 1893, 1894, 1896 to 1908, inclusive." Will you explain that further, Mr. Staples?

A. In order to avoid anybody asking why certain years have been omitted from this statement, I will say now I can't answer. There is no reason, so far as my direction to the office is concerned; in fact, the office had no knowledge of what this statement was to be made up for, but I remember their telling me that in some respect or other their records were either not completed or some good reason given why two or three years have been omitted in the earlier part of the statement. I can't say what those reasons were. But the statement shows: column 1, the year; column 2, the number of cars weighed; column 3, the character of grain. Then, after that is indicated the number of cars and the character of grain, which includes wheat, oats, corn, rye, barley and flax for the years designated.

Q. Does that refer exclusively to shipments upon the Northern Pacific railway?

A. Yes, sir.

Q. The title to the table does not so state, but this is exclusively Northern Pacific?

A. I will have to beg the pardon of everybody present; it takes in the grain from all the roads. I knew better but had forgotten it.

Q. This is wheat received at Minneapolis?

Mr. BUTLER: That would be the Soo, Northern Pacific and Great Northern?

WITNESS: No, sir, all the roads.

Mr. BUTLER: From the southwest as well as the northwest?

WITNESS: Yes, sir. I directed it this way, but I ordered it some time ago and had forgotten all about it.

Q. Now, there was received at Minneapolis, as I understand it, then, and weighed by your department in the year 1890, 99,602 cars of wheat, containing 34,920 pounds?

A. Each.

Q. 34,920 pounds?

A. That is right. Under the year 1890 there were, by all the roads entering and hauling grain to Minneapolis 99,602 cars of wheat delivered; the aggregate weight of that wheat, which was weighed by our department, was divided by the number of cars (99,602) and it was found that the average weight of those cars was 34,920 pounds.

Q. Go on through that first line.

A. The same year, there were 3,309 cars of oats delivered, carrying an average weight of 31,584 pounds; 10,473 cars of corn, averaging 36,232 pounds; 126 cars of rye, averaging 31,136 pounds; 551 cars of barley, averaging 31,920 pounds, and 1,122 cars of flax, averaging 30,408 pounds.

Q. Now, give the last line,—1908.

A. For the year 1908, there were delivered at Minneapolis, by all the roads carrying grain, 114,874 cars of wheat, and the weight averaged 65,820 pounds per car; there were 24,354 cars of oats, averaging 49,920 pounds per car; 5,443 cars of corn, averaging 59,080 pounds per car; 4,071 cars of rye averaging 54,376 pounds per car; 29,500 cars of barley, averaging 58,704 pounds per car; and 15,064 cars of flax, averaging 60,592 pounds per car. Now, to have it appear more clearly the purpose of this statement, I will take any grains desired. I will take wheat (the number of cars can be read from the statement) and the average per car for 1890 was 34,920 pounds; 1893, 39,480 pounds; 1894, 38,940 pounds; 1896, 41,640 pounds; 1897, 42,360 pounds; 1898, 43,260 pounds;

1899, 46,380 pounds; 1900, 48,420 pounds; 1901, 50,160 pounds; 1902, 52,920 pounds; 1903, 55,440 pounds; 1904, 55,680 pounds. It will be noted that, in 1903 and 1904, the increase is very slight and the number of cars have decreased. Undoubtedly that could be explained from the fact that the cars which were put into the scrap-heap or "scrapped" as they say, were the older cars, which were the smaller cars, leaving the larger ones upon which to make the average. 1905, 55,500; 1906, 59,280; 1907, 62,760, and 1908, 65,820. A similar illustration could be given based on the other grains.

Q. Have you the same information for Duluth?

A. Yes, I have. Not for quite the same number of years, it didn't occur to me to get Duluth until just three or four days ago, and thinking that some one might think there was some reason for it, I thought I ought to get it, but they did not have the time to go back as far. I think it was only last Saturday that I had the statement prepared.

Witness produces statement marked "Defts.' Ex. 3-H—Staples."

Q. Ex. 3-H—Staples is presented, being statement showing number of cars weighed at Duluth and average number of pounds per car of wheat, corn, oats, rye, barley and flax, for the years ending August 31, 1896, to 1908, inclusive.

A. The columns represent the same as I indicated the columns on the former exhibit show, covering the grain hauled to Minneapolis.

Q. And the table is prepared upon the same principle, exactly?

A. Exactly, except that it does not cover as far back.

Q. I notice that in this table Ex. 3-H the years read "1895-6."

A. That is for our fiscal year ending August 31, 1906. Our year ends with the grain year.

Q. The table Ex. 3-G, was that for the calendar years named?

A. Ending on the same dates.

Mr. BUTLER: Then the last date on that would be August 31, 1908, would it, Mr. Staples?

WITNESS: Yes, sir.

The MASTER: Covering the grain for the year, I suppose, was the idea?

WITNESS: Yes, sir; that is our grain year, and our records all close on that date. I don't care to go into this statement any further than to answer what somebody might very properly ask, why this indicates an average so much heavier than the Minneapolis statement, and I would explain that by saying that a very much greater percentage of the grain delivered at Duluth is delivered by the three northern lines, the Great Northern, Northern Pacific and Soo line; the average equipment upon those lines is considerably larger than that upon the southern lines, and that would account for the average being so much greater at Duluth than at Minneapolis. It will be noted, for instance, for 1908, the average of flax at Minneapolis was 60,592 pounds per car, and the average weight of the cars delivered at Duluth was 69,684 pounds per car; the average weight of the cars of wheat delivered at Minneapolis for the year ending August 31, 1908, was 65,820 pounds per car, while at Duluth it was 71,646 pounds per car.

Q. It is a fact, is it not, that the equipment or capacity of the box-cars owned by the Northern Pacific is above the average?

A. Yes, sir, it is above; their minimums are all higher. In other words, they have very few, if any, small cars, of any character.

Q. Mr. Staples, will you describe generally the character of freight local to Minnesota?

A. Well, at this time I am not able to give you the percentage relation, if your question means to go into that detail; but a very large amount of the tonnage is grain and farm products. Of course, I recognize the tonnage in the northeastern portion of the state as being distinctly different from anything elsewhere either in this state or any other, but I had no reference to that.

Q. Well, is there a large traffic, local to Minnesota, which, as a matter of fact, is transported in carload lots?

A. Yes, sir.

Q. Is there considerable of the freight, local to Minnesota, which is transported in trainload lots?

A. Why, I could answer that yes, at certain seasons of the year.

Q. For instance, there are entire trainloads of wheat carried from the Red river valley to Duluth and to Minneapolis, are there not?

A. Yes; there are, especially to Duluth.

Q. There are entire trainloads of lumber and logs hauled upon the Northern Pacific, are there not?

A. Yes; that is true, now, of logs, and has been true of lumber, but not so much so at present.

Q. There are many carloads of cattle the transportation of which is local to the state of Minnesota?

A. Yes, sir; Minnesota, in the matter of raising cattle for market, is growing, and now does market a great deal of stock; in fact, I think all of these roads, on one or more days of the week, run what would be called special stock-trains.

Q. There are what Mr. Tittemore described as "primary markets" for practically everything produced in Minnesota in the state of Minnesota, are there not?

A. Everything except iron, I think.

Q. There are primary markets in the state of Minnesota

for practically everything produced in the state with the exception of iron?

A. I think so, yes, sir.

Q. Now, that is not true of either of the Dakotas, is it?

A. No, sir, not in any sense. I might say that, in South Dakota, there is, I think, some attempt at a market for stock, but it is not recognized as a market of any considerable—

Q. Well, there is no such grain market—

A. There is no grain market.

Q. There are no great sawmills?

A. None.

Q. No great flouring mills?

A. No, sir.

Q. Neither is that condition true of Iowa, is it?

A. Iowa has a fair stock market, but has no great milling industries.

Q. Or sawmills?

A. All are local.

Q. So that, the same condition is more nearly true in Wisconsin, is it not?

A. Why, Wisconsin has a grain market at Milwaukee, but, from the best of my information, there is very little of their local grain marketed there, except right around Milwaukee.

Q. But Wisconsin is more similarly situated in that respect to Minnesota than most of the surrounding states, is it not?

A. Well, Wisconsin affords certain points where grain may be marketed, but it is exactly in the opposite direction of the market for surplus grain, it is on the western border of the state, and the natural market for surplus grain is eastward. There is a certain amount of flour manufactured in Wisconsin, but it is generally regarded as for local purposes, there are not large milling centers like Minnesota affords; in

fact, Minnesota mills about half the flour milled in the United States, I think we mill something like 123,000,000 of bushels annually.

Q. It was pointed out, in the Keyes case, which was tried before Judge Amidon, in North Dakota, that the tonnage in North Dakota, local to that state, was necessarily of a very light character, from the fact that there were no large terminals situated in Dakota, and very few large industries, and that the great and heavy tonnage, necessarily, was interstate. Now, I ask you (if you have not already done so), to describe generally whether that condition prevails in Minnesota.

A. The conditions are exactly the opposite in Minnesota, and I think in answering your former questions I have covered that.

Q. You have covered that sufficiently?

A. I think so.

Table entitled "Northern Pacific Railway Tonnage and Density Statement Taken from Reports to Railroad Commission," marked "Defts.' Ex. 3-I—Staples," and shown witness.

Q. Will you please explain Ex. 3-I?

A. Ex. 3-I shows exactly what the heading purports to show, and is composed of statistics taken from the official report of the Northern Pacific Company to the Commission, beginning with the year 1899 and including all the years up to 1908, inclusive. Shows, in column 1, the year; column 2, the loaded car-miles; column 3, the empty car-miles; column 4, total car-miles; column 5, the tons one mile; column 6, freight and mixed train-miles; column 7, the average tons per train; column 8, loaded cars per train; column 9, empty cars per train; column 10, total cars per train; column 11, tons per loaded car, and column 12, average tons per car, load and empty.

Mr. BUTLER: Does this mean in Minnesota, or on the whole line?

WITNESS: This comprises all the traffic in which Minnesota is interested, including the local and interstate traffic in which Minnesota is interested.

Q. That is, it includes all of the traffic touching Minnesota, both state and interstate?

A. Exactly, yes, sir.

Q. The last column, "Average tons per car, load and empty," refers to the freight and mixed trains, I presume, does it not?

A. That takes in the tonnage upon all the cars loaded with freight.

Q. All the freight cars?

A. Yes, sir.

Q. In solid freight trains and in mixed trains?

A. Yes, sir.

The MASTER: By "mixed" you mean empty and loaded?

Mr. O'BRIEN: No, sir, passenger and freight.

Q. By "mixed train" you mean passenger and freight, do you not?

A. Well, yes; but, of course, only relating to the freight end of it.

Q. That is, only the freight cars are taken into consideration?

A. Yes, sir.

Q. But where you refer to a mixed train you mean a train made up of freight and passenger cars?

A. I make the statement that that is the way I understand this is made up, but limited to freight cars only.

The MASTER: Whether they be loaded or empty?

WITNESS: Yes, sir. Now, this was made in our office by my direction, and I made it for the purpose of throwing light upon the question of the increase in the carrying power of the roads or the carrying power of the trains, if you please. Of course, that takes in the question of the carrying power

or capacity of the cars, but, more particularly, to determine or show whether the tonnage of the trains is increasing or diminishing.

Q. Now, in 1899, upon the Northern Pacific, it had in Minnesota 34,415,608 loaded car-miles?

A. Yes, sir.

Q. And a total, including the empty car-miles, of 46,444,601?

A. Yes, sir.

Q. And upon those cars, traveling that distance, there were hauled 465,120,423 tons one mile?

A. Yes, sir.

Q. In 1908, the total car-miles were increased to 76,865,552?

A. In 1908, yes, sir.

Q. That is, the car-miles increased almost exactly 30,000,000 above 46,000,000?

A. Yes, sir.

Q. Or, in round numbers, 70 per cent?

A. Yes, sir, nearly thirty-one millions and a half.

Q. The tons one mile increased from 465,120,423 to 1,091,290,482?

A. Yes, sir.

Q. In round numbers, about 120 per cent?

A. I will answer yes, with the qualification that I have not made any computation. It approximates that.

Q. Is there any other statement that you desire to make in regard to this, Mr. Staples?

A. No, sir. This was made for my own information, I might say.

Q. Have you prepared a statement showing the average revenue per mile obtained upon commodities under the present rates between certain large terminals?

A. Yes, sir.

Witness produces statement marked "Defts.' Ex. 3-J—Staples."

Q. The statement produced is entitled "Statement showing distance rates, minimum rates and revenue at minimum weights on various commodities between St. Paul and Crookston, Duluth and Pipestone, St. Paul and Chicago, and St. Paul and Bismarck, also value per car."

The MASTER: For what roads?

Q. With reference to what roads is this statement prepared?

A. The statement has no reference to any particular road, but would cover any road operating between the points indicated.

Q. The rates on the different roads between those terminals being equal?

A. Yes, sir.

Q. Now, please explain the statement Ex. 3-J.

A. Well, so far as the comparison of rates may be worth anything at all, also so far as the question of the relation of the value of the product transported to the rate, is concerned, we sometimes work up data upon those two points, not that they are controlling or governing, but naturally one of the factors taken into consideration in the making of rates by railway companies,—when a traffic man is asked for the items which he considers, he will generally and almost invariably say the value of the product is one of the factors—and this statement is made up with a view of showing, at the minimum weight, what these different commodities will be transported for between the different points; showing, as the statement indicates, the minimum weight, the revenue at the minimum weight and the value of the produce in the car. And I will say that the value is based upon the value at the terminal market, not at the point of origin. And, further, the values used in this table are the values, so far as it was possible

to determine them, which are now prevailing. I have the prices upon all the commodities used in making up this statement, and my direction as to wheat, for example, was to take the average price of all the grades of wheat which are being transported, for the reason that the rate upon wheat is the same regardless of its grade. One grade may be worth 60 cents, and another a dollar, but there is a medium where you can strike the average value of the product.

Q. The first four columns refer to the traffic between St. Paul and Crookston?

A. Yes, sir.

Q. The second four to the traffic between Duluth and Pipestone?

A. Yes, sir.

Q. The third four columns, between St. Paul and Chicago?

A. Yes, sir.

Q. And the fourth set of four columns, between St. Paul and Bismarck?

A. Yes, sir. And in each group of four columns, in the first column under the heading, is given the miles between those two points.

Q. The minimum weight of a car of wheat between St. Paul and Crookston is 48,000 pounds?

A. Yes, sir.

Q. You took the rate per one hundred pounds, established between St. Paul and Crookston, and calculated how much that would produce if a car were loaded at a minimum of 48,000 pounds?

A. Yes, sir.

Q. And found that to be $52.80?

A. Yes, sir.

Q. You took the same number of pounds of wheat at the average price and ascertained that the value of the contents

of that car would be $870?

A. Yes, sir.

Q. And this entire table is constructed in the same manner?

A. Yes, sir.

Q. So that, if we read along the first horizontal line after the heading, we will find that a carload of wheat weighing 48,000 pounds will be transported between St. Paul and Crookston, 291 miles, for $52.80, and that that wheat would be worth $870?

A. Yes, sir.

Q. That a carload of wheat weighing 45,000 pounds will be transported between Duluth and Pipestone, 304 miles, at a cost of $65.25?

A. Yes, sir.

Q. And that the value of the wheat would be $817.50?

A. Yes, sir.

Q. That a carload of wheat weighing 43,000 pounds would be transported between St. Paul and Chicago, 401 miles, at a cost of $43?

A. Yes, sir.

Q. And that the value of that wheat would be $780?

A. Yes, sir.

Q. And that a carload of wheat would be transported between St. Paul and Bismarck, 443 miles, weighing 48,000 pounds, at a cost of $76.80, and that the value of the wheat would be $870?

A. Yes, sir. And when it reads "St. Paul," it also means including Minneapolis.

Q. In giving the Chicago mileage, you have used the shortest line, I believe?

A. Yes, sir. I might say the average minimum upon the different roads, between the points named, is the minimum weight used in this computation, but my tabulations here

show that the grain actually loaded into the cars and actually shipped is very much greater than these minimums; but the minimums are used for the reason that we have no means of knowing the average loading upon other commodities, and these indicate the minimums which the companies are willing to haul and which are provided in their various tariffs. As I said at the outset, one purpose was to have indicated the value of the commodity found in a car and the revenue it yields to the Company. Taking the rate between St. Paul and Crookston on wheat, for instance, the earnings based upon the minimum weight would be $52.80, and the value of the product would be $870; then take flax, the earnings would be the same, $52.80, and its value would be $1,370. Take salt, the earnings upon a carload of salt between St. Paul and Crookston, at the minimum weight, would be $44.40; the value of the carload would be $97. A carload of sugar, at the minimum weight the earnings to the company would be $70.80, and the value of the carload of sugar would be $1,375. And that would be typical, perhaps, of the differences between all the points.

Q. I desire to call your attention to the item of hard coal, and also to the item of soft coal, in the first group.

A. Hard coal, the revenue under the minimum weight, between St. Paul and Crookston, would be $52.50; the value of the coal would be $212.50, the revenue, under the minimum weight provided for soft coal, would be $50, and the value of that car of coal would be $87.50.

Q. Do you mean $87 at St. Paul or $87 at Crookston?

A. $87 at St. Paul.

Mr. BUTLER: What would be the value at Chicago,—$87.50?

Mr. O'BRIEN: That is what is given, Mr. Butler.

Mr. BUTLER: Well, is that true?

WITNESS: If it was the same kind of coal.

Mr. BUTLER: The same price in both places?

WITNESS: Yes, practically. There is a little difference, however, in favor of Chicago. Answering these questions generally, the prices are those prevailing at the terminals, St. Paul, Minneapolis and Duluth.

Q. Is there any other statement with regard to this table that you wish to make?

A. No, sir.

The MASTER: Would that be true as to the value between St. Paul and Chicago?

WITNESS: If the Court please, would what be true?

The MASTER: The value of the car. That is, are the values placed in this table at the point of origin every time?

WITNESS: Why, I perhaps gave the nearest answer I can to that in my last answer. Take wheat, for instance: It is often, and generally the case, that wheat will range the same at Minneapolis as at Chicago, sometimes a little higher, and a shipper midway between the two markets is often influenced by his preference for the market, whether it goes to Minneapolis or Chicago. I would say, with regard to sugar, that the value at Chicago and St. Paul would be about the same; if anything, it would be a little lower at Chicago. Now, ordinarily, coal would be a little cheaper at Chicago than at St. Paul, speaking of the same class, the eastern coal. That is due to the fact that Chicago is one of the distributing centers and that the price is also influenced somewhat by the local coal; but the prices used here (to be perfectly fair about it) are the prices, to all practical purposes, prevailing at St. Paul and Minneapolis and Duluth.

The MASTER: That is what I wanted to know. You said it did pertain, for instance, to Crookston and Pipestone, and I wondered if it pertained, also to Chicago. You say it does?

WITNESS: Well, they (the prices) would be practically the same on most commodities. They might be different upon coal.

Q. Mr. Staples, the Northern Pacific Railway Company does a very large interstate business, of course, does it not?

A. Yes, sir.

Q. And the transaction of that business requires the maintenance of very large terminals, I believe?

A. I would reverse the statement: the very large interstate business makes large terminals necessary.

Q. Now, the terminals of the Northern Pacific located in the state of Minnesota are very large, are they not, and extensive?

A. Very large; larger than those of any other system within the state.

Q. They have large shops in this city?

A. Yes, sir.

Q. Large shops at Brainerd?

A. Yes, sir.

Q. Extensive terminals and yards at Staples?

A. Yes, sir.

Q. And very extensive yards and terminals and dock facilities at Duluth?

A. Yes, sir, and very large terminals and yards at Dilworth, just this side of Moorhead.

Q. The Northern Pacific is a thoroughly well-equipped road, is it not?

A. Regarded as one of the best in this state, perhaps in the country.

Q. You have, during the time that the valuation was being made by Mr. Morgan, had an opportunity of examining the physical condition of that road, have you not?

A. So far as I am capable of doing so, yes, sir; I have been all over the property.

Q. State, generally, whether you consider its property in excellent condition.

A. First class.

Q. And the revision of its grades, that has been going on for a long time, has given it a most excellent roadbed, I believe?

A. Yes, sir.

Q. State whether or not, in your judgment, its equipment is ample.

A. You mean to carry on its business?

Q. Yes.

A. In the ordinary sense, yes; and, under stress of very great business and unusual volume of business, will be, in my judgment, as soon as certain double-tracking is completed. I think the equipment is ample, that is, I think the road keeps up upon the question of equipment.

Q. Did you hear Mr. Howard Elliott's testimony in this case, the President of the Company?

A. Yes, sir.

Q. Do you agree with him in his description of the character of the country tributary to the Northern Pacific, as to its fertility and productiveness and its future?

A. Yes, sir, I think Mr. Elliott's statement in that respect was a very fair presentation of what the road is now and of what it was contemplated for.

Q. State what effect, in your judgment, all of these conditions have upon the stability of the investment in the Northern Pacific properties.

A. Why, my judgment is that they are a guarantee of permanency.

Q. To what extent?

A. Why, for all time to come, if the Lord is as good to us in the future as He has been in the past.

Mr. BUTLER: It depends upon future generations whether He will be or not.

The MASTER: I suppose the Court will assume He is going to be.

WITNESS: Well, I hope that answer was understood. We have questions of crop-failure and other visitations to contend with, that never can be absolutely anticipated, but, in a general way, my judgment is that the future of the Northern Pacific, so far as its being a good investment, is assured. As to what the management will do for the road in years to come, nobody can predict.

Q. I wanted to know your judgment as to whether or not the Northern Pacific Railway Company had gone far beyond the speculative period.

A. My judgment is that it has.

Q. And the present development of the country, the physical condition of that road, itself, its resources, in the way of coal supply, the almost inevitable further development of the country tributary to it, all go to safeguard the investment that is in the Northern Pacific, do they not?

A. That is my judgment. I give it, of course, in a general way. I have not been over all the roads of the country, and if I had, I would not know the actual conditions prevailing upon all of them, but I have been over the most of the main lines of the country, at different times, and think that I can answer that question without any hesitation.

Q. State whether or not all of the property belonging to the Northern Pacific Railway Company situated in the state of Minnesota is used exclusively for the transaction of business local to the state of Minnesota.

A. It certainly is not.

Q. Interstate and state traffic is carried on on the same tracks, often by the same trains, and, again, often in the same cars?

A. Yes, sir.

Q. State what your judgment is with reference to the proportion of the property located in the state of Minnesota which should be taken into account in ascertaining what a

return should be based upon; that is, assuming that the return is to be based upon the value of the property itself.

A. I will undertake, perhaps in a general way, to answer that question, and will give you what appeals to me as a reasonable way to look at it. It seems to me I have a right to start out by concluding, for my own information and guidance, that it was never intended that all of the property should be considered in measuring the value of the property necessarily or actually used in the conducting of the business, in considering a reasonable earning or return either upon the purely state traffic, or the reverse, upon purely interstate traffic. As I say, it seems to me that I have a right, and I will say that I do, start out with that view of the question. So far as I know, no court has ever indicated a line of demarkation or rule for a division of the respective values of the property which should be considered in the question of its use for state or interstate traffic. There might be several methods used or brought into exercise. First, it is necessary to determine the value of the property. It is well known, without my saying it, that a good deal of effort has been made here before the Master to determine the value of the property; but, so far as I have heard any testimony, that has only pertained to the aggregate or total value, without any reference to any division; if any testimony has been offered, I haven't heard or read it, upon the question of a division of those values. After the actual value has been determined, then your question, I take it, is directed to the division of those values. In arriving at what the actual value of the property is, I take it that that is not a matter upon which you wish any expression from me; there are several ways to arrive at it, and I have no purpose to consider that phase of the question. But, after you have determined the value of the property within the state, you might then base the value of the property necessarily used in the conduct of state busi-

ness upon the relation of the tonnage or the tons one mile of local traffic to the tons one mile of interstate traffic. You might make the relation based upon the gross earnings of the intrastate (I will confine myself to the word "local," always meaning intrastate), the local business, to the gross earnings derived from interstate business. When I use the term interstate I mean all business in which Minnesota is interested. You might base the division upon the net earnings of the intrastate or local to the interstate business. You might base it upon the cost of operation locally to the cost of operation for interstate business. My judgment is that the gross earnings basis or the net earnings basis would not be fair; they would vary, different years, according to conditions; in other words, they don't maintain a stable relation or condition. You might base it upon the question of mileage (the roadway mileage) within the state to the entire mileage of the System.

Mr. BUTLER: Do you mean track mileage?

WITNESS: No, sir; for instance, if a train would run 249 miles going between St. Paul and Moorhead, I would call that the roadway mileage, though there might be 300 miles of actual track, in the way of double tracks, or even three tracks, at some points. Do you understand me?

Mr. BUTLER: No, sir.

Q. Well, I understand, Mr Staples, that you mean the direct mileage or direct miles of track between two points.

A. I mean the actual distance measured upon the roadway.

Mr. BUTLER: Well, compared with what?

WITNESS: Speaking of the System as a whole.

Q. Excluding switches?

A. Excluding switches, side-tracks, double tracks, or any tracks, excepting one main track.

By Mr. BUTLER:

Q. See if I understand what we are at: The problem is a basis of division of the value of the whole plant in Minnesota chargeable to the local and the value chargeable to the other?

A. Yes.

Q. Now, what do you mean when you say a division on the "roadway" basis?

A. I mean that, measured upon the basis of the roadway mileage, if there should be 1,000 miles in Minnesota and 5,000 miles in the System, if anybody sought to use that basis, it would be one-fifth.

Q. That is, for instance, if the value is 100 miles in Minnesota, then on such theory you would give 20 miles to the local business and 80 miles to the other?

A. Yes, on the basis of one-fifth of the mileage.

Q. The figures are arbitrary?

A. Yes, sir.

Q. I wanted to get the method. I understand it is not your method, but simply a method. I think I understand it now.

Recess till 2 P. M.

AFTERNOON SESSION.

WITNESS: One other means of arriving at a division might be the ton mileage, the relation of the purely local to the interstate, as the two relate to the state only. And if I recall the different suggested methods which might be considered, I have enumerated all that appeal to me as of particular moment or that might be even reasonably considered. As I said this morning, some of them would not appeal to me at all; others, while they might be fair some years and under some conditions, could not be used, constantly, because of their variations. The plan that would appeal the strongest to me would be that of the operating expense, the relation the item

of interstate traffic would bear to the intrastate traffic. I say that because I believe that is the most stable Now, I can't offer any examples at all, and it will be useless for anyone to request a practical example. In a general way, that would be my judgment. The question of operating expense account is the most constant factor; that is, it is the factor which would remain, in my opinion, the most stable and would fluctuate the least. The traffic of the System may fall off perceptibly,—there are many items in the operating expense which will not be changed at all. Of course, some items can be eliminated, but unless the volume of traffic is very materially reduced or, at least, it must be very materially reduced before the item of expense is reduced in any considerable proportion accordingly. I think generally, Mr. O'Brien, that would be all I care to say upon that subject.

I have prepared in the office, at Mr. Butler's request, or had prepared, a tabulation which is a statement showing stations on various divisions of the Chicago, Milwaukee & St. Paul and the Northern Pacific, and the distances from St. Paul or Minneapolis, and the old first class rate or the old rate upon first class merchandise. When I say the old rate, I mean the rate which obtained just p[illegible] to the order of the Commission of September 6th. I have not had time to analyze or study this, but all that is lacking now is a statement giving the percentage comparison of other rates to first class rates, and that will be furnished as soon as the office can prepare it. (Witness produces statement.)

Mr. BUTLER: That is in connection with one of your exhibits?

WITNESS: Yes.

Mr. BUTLER: With your Ex. F, I guess?

WITNESS: Well, it was the exhibit showing the first class merchandise rates on all the different roads for different mileages.

Mr. O'BRIEN: I now offer in evidence the exhibits presented by Mr. Staples, being Exhibits 3-C, 3-D, 3-E, 3-F, 3-G, 3-H, 3-I, 3-J. I think that includes them all, but if I have omitted one, I presume it may be considered in evidence.

CROSS-EXAMINATION

By Mr. BUTLER:

Q. Mr. Staples, in your study of railroad rate-making, have you ever been able to formulate, to your own satisfaction, a definition of what is a reasonable rate?

A. I have formulated what, in my judgment, were factors which ought not to be lost sight of in determining whether any specific rate is a reasonable rate. I assume, in the asking of your question, you are confining it to either one of two things, either the rate upon a particular commodity, generally speaking, as to the subject it would cover (say the state), upon a particular line of road, or that your question is directed to a rate upon some particular commodity between two particular points; I wouldn't know which.

Q. Well, what I wanted to get at, in the first place, was a definition of what is a reasonable rate as applied to any particular kind of class of traffic; I will then come to the considerations by which that is determined, and I will then come to the reasonableness of a schedule; but I have asked rate-makers, both state and railroad, to give me a definition of a reasonable rate, and I am curious to know whether or not you have ever undertaken to reduce that to a statement that would be definitive, inclusive and exclusive.

A. In my own review of the question you ask, I have never found it possible to eliminate from consideration the general rate question in undertaking to arrive at what is a reasonable rate, and, ultimately, you land where you want to consider what the aggregate returns are going to be to

the company. Necessarily that covers the traffic handled by the company.

Q. In determining the reasonableness of any rate upon any particular line, kind or class of traffic, are there, as a matter of fact, always many elements to take into account?

A. Not necessarily. Sometimes there are many elements.

Q. Sometimes there are many elements?

A. Yes, sir.

Q. And sometimes there are not?

A. Yes, sir.

Q. Are there always a few elements to be taken into account?

A. Yes, sir.

Q. And in number how many, in the minimum, constantly to be taken into account?

A. Well, that would vary with different classes of traffic.

Q. Well, I was calling for the class of traffic where there are the smallest number of elements which always must be taken into account.

A. Well, my first answer, while I might enlarge or extend it, would be there are three factors which I would regard as particularly essential.

Q. And constant?

A. And constant.

Q. Now, let us have them.

A. One of those would be (if I don't make this definition clear, I will amplify it), I would say, the needs of a particular community or the community to be served, with reference to the particular traffic.

Q. Might that be called the value of the service to the shipper?

A. Why, in a way, it might be called the value of the service, if that might encompass the question of the necessity for having the particular traffic, or having it moved.

Q. Well, that is one. Now, what is another one?

A. I should say another would be the volume of that traffic.

Q. That is two?

A. Then, I think its value.

Q. The value of the stuff moved?

A. Yes, sir.

Q. That is three.

A. Now, as I said, I think those are factors which should, so far as I can think just now, in the practical application, never be lost sight of.

Q. Do you think of any others that should never be lost sight of?

A. Perhaps a factor would be the question of the ability of the company to move the traffic. The expense, if unusual, should, of course, be borne in mind, and that, perhaps, would cover the question of the general trend of traffic. The movement of cars would perhaps be a feature in that same item.

Q. Now, is that all of the constant elements to be always held in mind?

A. I wouldn't want to say that, but I regard those, Mr. Butler, as essential elements; some, perhaps, more so than others, but items that, for the purpose of giving the subject fair consideration, must be regarded as—I won't say vital, but as very material.

Q. Do you regard the expression "just rate" and "reasonable rate" to be equivalents, synonymous in meaning?

A. There might be a distinction there in some cases. It might not be easily defined, but when I answer such a question as that, Mr. Butler, I may not have the same thought in mind as you have when you ask the question. You will appreciate that, readily.

Q. Yes, I appreciate that. Both phrases, which I have referred to in the question under consideration, are commonly

used in all discussions of the subject, and I thought it might be of advantage, at the outset of the cross-examination, to see whether or not we understood the terms alike.

A. Well, may I give you an illustration or example of how I would define a reasonable rate?

Q. Yes, I asked for that, first.

A. Well, we will say the road interested and the shipper interested are unable, for some reason or other, to agree, and they mutually appeal to the Commission or ask for a conference with the Commission; it may be entirely friendly,—generally is, and they want to establish what they term to be a reasonable rate upon a particular commodity, it may be something new. Now, you would have to take into consideration quite a few factors, but one would be the rate upon some other commodity which is in competition with it, in order to determine whether that rate was reasonable. I would describe that to mean whether it was reasonable in its relation to other rates which would take that commodity, itself, or the manufactured product from it. Now, a just—

Q. That is to say, in determining the reasonableness of any proposed rate it is right to take into consideration the existing rate on any competing freight; that is, competing as to the use?

A. Yes, that was my meaning.

Q. As, for instance, if it be corn upon which it is proposed to fix a rate, or a rate upon oats, both being used for horse-feed, would be a circumstance and a factor to take into account?

A. Yes, it is, but I had an idea in mind going beyond the question that is so apparent, as we know.

Q. Well, that illustrates very clearly the thought you had in mind?

A. Yes, it does.

Q. And, for instance, livestock, cattle and dressed meat?

A. Yes. Another very good one, Mr. Butler, would be a new fuel which comes onto the market. That, perhaps, would be a very good illustration. You could not eliminate, in determining what was a reasonable rate upon that new commodity—

Q. A kind of coal different from the kind commonly used in the territory involved?

A. Well, yes; you would get a new manufactured article of fuel.

Q. Bricquettes of lignite, for example,—

A. Well, anything you see fit to cite.

Q. —as Gen. Washburn tried to start an industry in that line, in the Dakotas, I think.

A. Now, my intention was to convey the idea that, to determine whether a rate upon that is reasonable, you must consider rates upon other fuels with which he must come into competition.

Q. Now, again, to get back to a reasonable rate and a just rate, is there any just rate that is not a reasonable rate, or is there any reasonable rate that is not a just rate? Perhaps that will enable us to tell whether they are synonymous.

A. Of course, to analyze it to its finest detail, I think I would say no, that a rate to be reasonable, must be just.

Q. And if just, it is reasonable?

A. Yes, but in determining whether it is just or not, you often have to go into certain details which might not satisfy the person making the inquiry, he might base his objection upon the question of tonnage, the earning power to the company. A party who felt aggrieved might base his objection to what I would call a just rate upon the ground that the tonnage involved (that is, the minimum or the maximum, if you please, carload), would bring to the company a certain amount, and say, "I have the same maximum of a certain commodity here; shouldn't mine be transported for the same

amount?" He might not be satisfied with my definition or interpretation of what was a just rate.

Q. No, I was trying to get definitions you were satisfied with yourself, Mr. Staples.

A. I appreciate that, but I gave that illustration to show the distinction between what would govern in my mind and what would govern the person reasoning from a personal interest.

Q. That is true, but as a commissioner charged with the duty of deciding questions between shippers and common carriers of freight, I take it, from what you have said, that you are willing to have it set down that, in your judgment, a reasonable rate means substantially the same thing as a just rate. Now, is that fair?

A. Well, Mr. Butler, I want to answer that in the affirmative, with the qualification that it is used in its broadest sense and in its general application and not confined to too definite or specific instances.

Q. Now, discrimination, I take it, in its broadest sense, means a difference in rates, doesn't it, and may be a just difference or just discrimination or an unjust difference or unjust discrimination?

A. I would so regard it, yes, sir.

Q. So that mere differences do not mean a legal discrimination?

A. Not as I view the question.

Q. And to determine whether the difference be just or unjust, all of the circumstances affecting the value of the carrier's service to the shipper, to the community, and all the circumstances affecting the cost of the service to the carrier, must be taken into account, as well as the conditions resulting from competition between carriers and competition between commodities; those things at least must be taken into account, must they not?

A. Yes, sir.

Q. And, perhaps, in given circumstances, many others, that would be impossible for the most expert to answer?

A. I agree with you, decidedly.

Q. Now, there is a relation of rates, is there not? That is, the relation of the rate on one commodity as compared with rates on all the other commodities, on one class as compared with rates upon all other classes?

A. I could answer that in the affirmative if you are confining your question to the matter of class rates.

Q. Well, we will do that. So, then, it is true, as between classes, the so-called merchandise class rates, there is, in fact, a relation between the rates on one class and the rates upon all the other classes? I will so confine the question for the present.

A. Generally speaking, yes.

Q. So recognized by railway carriers, as evidenced by the Western Classification, which, subject to certain exceptions, not important here, you have adopted and is recognized generally by the carriers in this part of the country and the country over; am I not right about that?

A. Well, yes, but I would have to qualify that a little, Mr. Butler.

Q. I don't mean that it is the same uniformly, Mr. Staples, but I mean there is a relation.

A. Well, when you say the same, you mean with respect to what?

Q. Class rates. I don't mean that the relation is always constant, Mr. Staples, in different parts of the country, or, indeed, in the same part of the country, but I mean there is a relation that is recognized.

A. Yes; yes, sir.

Q. And is there not, also, a recognized relation (I am not now calling for an expression of what it is), between the

rate on any commodity and the rates on the other commodities, and, indeed, upon the classes?

A. Well, if there is, Mr. Butler,—I want to put it fairly—it is rather difficult to trace, satisfactorily, what that relation is. I want to say that I have devoted a great deal of time, personally, trying to find just what that relation is, that I may say what, in my judgment, it ought to be.

Q. Is it possible, Mr. Staples, in any state or any given section of the country, to fix a definite rule by which to determine what, in justice to all parties concerned, ought to be the relation between the freight rates upon one kind or line or class of traffic, as compared with the rates upon the other lines, kinds and classes of traffic?

A. Why, I think, Mr. Butler, that, take a large state like Minnesota or the Dakotas, where the conditions in the different parts of the state are reasonably, generally speaking, the same—and you might extend that to two or three or more states—if the conditions would answer the same definition, generally speaking, you might establish what could govern, reasonably, the relation which would be fair between the different classes of traffic; but I don't mean to convey the idea that that could be fixed so that it is arbitrary and becomes the inflexible rule. I believe it is just a good deal as the tariff question is: if it is fairly handled, I think it must be subject to, not constant review, but frequent review, and it might require to be changed.

Q. Well, now, as a matter of fact, Mr. Staples, there never has been formulated any rule for determining the relation of rates to which I have referred, has there?

A. I think not. I think not, Mr. Butler. I have never found any.

Q. So, if you were teaching a beginner on this subject, you couldn't state to him the rule for the determination of such relation, could you?

A. No, sir.

Q. There has grown up a relation, has there not, which has been recognized?

A. Well, I couldn't answer that yes, Mr. Butler, either as to one road, itself, or as to the relation existing between the different roads, and I am confining my answer to Minnesota alone. I said I couldn't answer that yes.

Q. So it cannot be stated, under any given circumstances, what ought to take the higher rate? It may be, in instances, but I mean generally speaking.

A. I might have an opinion of my own, but I would answer your question yes. That means that, generally speaking,—

Q. It can't, generally speaking, is that what you mean to answer me; or, that it can be, generally speaking?

A. I am not answering you that I might have an opinion which commodity, we will say, should be considered first, and the relation of the others to it, but I answer your question no, when I say that, in a general sense, there has been no attempt, so far as I know,—and I don't know of any number of men, either railway men or commissioners, who have undertaken to go that far.

Q. Would it be unfair, in your judgment, to say that the relation between rates, to which reference has been made, depends upon a multitude of circumstances and conditions, and that it is probably impossible, in any single instance, to state what all of such circumstances and conditions are?

A. Oh, I don't think it is so impossible as your question would imply, to arrive at what a fair majority of traffic men might agree was a reasonable relation.

Q. I am trying to get at the method of reasoning, the circumstances which are taken into account; are they not as variable as can be?

A. They would be if you were comparing different states,

perhaps, or, at least, different sections of the country; that would be true.

Q. Well, I meant to confine it to the same section.

A. No, I don't think so.

Q. What considerations make the difference between the hard-coal rate and the soft-coal rate? That is a very common commodity, one that has been much discussed in rate-making. Hard coal always takes a higher rate than soft coal; now, what are the conditions that make that so, first, and, next, what are the conditions that make it so in the degree that it is so, if you can tell?

A. Ever since the inception (I think that would prove to be true), or the inauguration of the traffic by the Northern Pacinc, the Great Northern and the Soo line, the rate upon hard coal and soft coal has been the same to practically all the stations upon those lines.

Q. I didn't know that. Well, now, you have made it different, I think, haven't you?

A. Yes, sir.

Q. On what considerations should it be different, and upon what considerations could you determine, or can it be determined, how much difference there ought to be? I use that simply as an illustration.

A. Yes, I understand; it is all right. Soft coal is a very important factor in manufacturing enterprises, hard coal is a fuel entirely eliminated. Soft coal is a very common fuel with a very large element of our population, though a long way from the coal-fields, and, particularly, I may say, with the poorer class of people. In the northern part of the state, excepting with the well-to-do families, soft coal, in many instances, is the only fuel they have, using no hard coal whatever—in many cases no wood; and it is now becoming quite a factor in manufacturing, so far as there is much of that carried on in the northern part of the state, and is a very im-

portant factor in the southern part of the state (and when I say the southern part, I perhaps go more than half way to the northern line), taking in the larger centers and the smaller towns, and the larger towns which are doing more or less in the line of manufacturing. It seems to me that that is a very important factor in determining whether or not soft coal should carry a lower rate than hard coal. Hard coal—I don't want to say it is a luxury,—

Q. It is a comfort in cold weather?

A. It is a great comfort, but it is not an absolute necessity, and the best of us have seen times, within three or four years, when we could get along without it very well and would be mighty glad to get the soft coal.

Q. Well, then, would it be fair to say that it was because of the needs of the shippers that soft coal takes a lower rate than hard coal, or, more fairly, that the needs of the shipper are among the reasons for the difference?

A. That would be among the reasons, Mr. Butler.

Q. One of the reasons; I didn't mean to be exclusive. And so instances might be multiplied all through the schedule, might they not, where the circumstances and needs of the shipper must be taken into account?

A. Yes, sir, I think so, decidedly.

Q. So that the cost to the railroad company of rendering the service is not, in your judgment, the sole test?

A. For what, Mr. Butler?

Q. Establishing the relation of rates on one commodity to the rates on all the others.

A. No, sir, I don't think it is.

Q. And it wasn't even mentioned in the constant elements to which you referred, was it, in your first definition?

A. Yes, it was. Not in those terms.

Q. But you think it was included in something you did say?

A. I am sure it was.

Q. It is utterly impossible, is it not, with any lead-pencil that you ever saw, to tell the difference in cost for carrying commodities bearing under your schedules different rates? I don't mean the first class compared with the lowest, but in some instances.

A. Well, Mr. Butler, you have opened a very deep well, there.

Q. I thought it was a high mountain!

A. No, it is a deep well; it is a big hole you are looking into; you can't see the bottom of it. I think it is entirely possible to take a trainload of coal from Duluth to Moorhead, and, to all reasonable minds who are reasonably conversant with the business, determine what it costs to move that trainload of coal.

Q. A trainload of hard coal and a trainload of soft coal, of the same tonnage, would cost, in your judgment, substantially the same?

A. Yes, sir.

Q. The earnings allowed, however, by your schedules, are very different?

A. Yes, sir.

Q. That was an instance, then, where, as far as the relation between the rate on hard coal and the rate on soft coal is concerned, the element of cost of rendering the service is ignored? Now, bear in mind just how I said that.

A. No, sir, I wouldn't want to say that it is ignored, Mr. Butler.

Q. The question did not absolutely relate to a relation of one rate to the other; it was ignored, then, because the cost would be the same?

A. I beg your pardon, yes, sir, that would be true.

Q. And I suppose, Mr. Staples, if we went into these classes from 11 to 17, that we could pick out instances of

grain, for instance, taking different rates, that, as a practical matter, it would be impossible, either for a carrier or for the Commission, to establish a difference in cost of transportation, at the same time or under similar circumstances, for like distances?

A. Yes, you take cattle—

Q. Well, I was speaking of grain, now.

A. I thought you included cattle.

Q. No, I didn't intend to. Maybe the question was broad enough to, but I was thinking of grain. That would be likewise true, would it not?

A. You mean of the different kinds of grain?

Q. Yes, taking different rates.

A. Yes, that would be a good deal true, Mr. Butler.

Q. So, then, with respect to many things (and we will not attempt to enumerate them) in these commodity rates the relation of the rate on one to the rates on the other, or, perhaps, the rate on some other, was made independent of the consideration of the difference in the cost to the carrier of rendering the service, just as you have said cost was ignored in the matter of hard coal and soft coal?

A. Well, I wouldn't want to answer, for a moment, or be understood to convey the idea, for a moment, that the question of the cost to the carrier was ever ignored.

Q. I mean in getting at the relation, Mr. Staples.

A. Yes, well, now—

Q. Not any absolute rate, but getting at the relation.

A. If I don't answer your question in accordance with what you were trying to get at, Mr. Butler, I hope you will excuse me.

Q. I have a little map of what I am trying to get at, if you will follow me I will go over the map, if you don't, I won't.

Mr. O'BRIEN: Well, is there any difference between estab-

lishing a relation and establishing the rates?

Mr. BUTLER: I don't know, Mr. O'Brien. I am trying to find out.

The following question was read: "So, then, with respect to many things (and we will not attempt to enumerate them) in these commodity rates the relation of the rate on one to the rates on the others, or, perhaps, the rate on some other, was made independent of the consideration of the difference in the cost to the carrier of rendering the service, just as you have said cost was ignored in the matter of hard coal and soft coal?"

A. Now, I will have to answer that, Mr. Butler with the thought which I had in mind, and I mean to say to you that if that does not answer it, I desire to do so—

Q. All right, I will try again.

A. —I have no wish to dodge you, for a moment.

Q. I believe that, sir.

A. The question of the relation of the rates upon the commodities was established, first, in the order of the Commission, and, second, by act of the legislature,—which was simply adopting the original on a higher basis,—

Q. The relation being preserved?

A. The relation being preserved, after as much study as it was thought necessary to devote to it,—was established, as nearly as possible, observing the rules which had governed with the different roads in the state for years past, and, in fact, any attempt to undertake to establish a new relation of rates was practically given up, and the guide used by the Commission was based, as I said, upon the existing relations. Now, we undertook to bring all the roads together and recognized what was being done by each and every one; and while there may have been some changes, it was recognized that a relation had been established which had governed in this state for a long time, and there seemed to be no good reason

or any justification for any radical change; and I am sure that had one been undertaken it would have created a great deal of trouble, not only with the carriers, but with the shippers interested in the different commodities under consideration. Now, I have tried to convey to you, Mr. Butler, that the Commission undertook no new relation of the rates upon the various commodities which were under consideration.

Q. That is to say, you disregarded, of course, unimportant variations, adopted substantially the relations indicated by the tariffs of the railroads, taken as a whole, in force in the state before the application or attempted application of the rates in litigation? I am not sure that I have stated that as you would like to have it.

A. I think practically you have, Mr. Butler, and as I remember this whole incident, I desire now to testify the way that is my best memory of the conclusions?

Q. Well, now, then, to get at a conclusion from that, the relation of rates one to the others, then, were not determined by your Commission in these orders that you made—first, with respect to the classes, and then with respect to the commodities—found to be unjust or unfair or working injustice to the people of the state, as far as relation was concerned?

A. Upon the question of the rates covering the classified schedule, the Commission was then, had been for years, and is now, constantly considering a change in the relationship, and changes are taking place every few months; in other words, they are being adjusted; classes are being raised or lowered, according to the decision after hearing both the shipper and the company; but, upon the question of the relation of the commodities, my personal judgment is that the relation of the commodities might be changed.

Q. Well, you didn't change any of them?

A. It wasn't undertaken to change them.

Q. And, of course, if there had been any glaring injustice

being worked out, you would, when you had the whole subject in hand, have undertaken to have eliminated them, wouldn't you, Mr. Staples?

A. No. I think not. The problem was too big and too serious to undertake to do it in connection with what was the purpose of the Commission at that time.

Q. The Commission has been observing the rates, with power to change them upon complaint, or upon their own motion, for twenty years?

A. Yes.

Q. And you do not, in behalf of the Commission, want it understood that there has been, for any periods of time, existing any glaring injustice in the matter of these relations of rates one to the other, do you, Mr. Staples?

A. I think this, Mr. Butler: that the relation has been constantly changing for the better,—

Q. Yes.

A. —but that never ought to be undertaken in one full sweep.

Q. And wasn't undertaken at all, here in your order?

A. Not any further than I have indicated.

Q. And one of the tables that you have introduced in evidence is for the purpose of showing, is it not, that the rates theretofore existing, as between the classes, the relation is substantially the same as you established it?

A. Yes, sir.

Q. It does say so, and that was the purpose for introducing it, wasn't it?

A. Yes, sir, it was.

Q. So, far as the relation is concerned with respect to the classes, you simply adopted the conditions as you found them, with the understanding that they are being modified all the time by the Western Classification Association and by your-

self approving or disapproving their acts, or acting on your own initiative?

A. Yes, sir; that is being constantly done and that fact was recognized and eliminated so far as those rates were concerned; that was a factor.

Q. And it must be done slowly, if wisely?

A. That is my judgment, yes, sir.

Q. Taking up a single commodity or a single item of freight, out of the classes, at a time?

A. Yes.

Q. And in the commodity schedule, you created in your order of December 14, 1906, some seven new classes; they were called "classes," being 11, 12, 13, 14, 15, 16 and 17, as I understand it?

A. That would be seven, yes.

Q. Seven new classes. In doing that, there was no sharp or abrupt change of relation, was there, taking it in the broader view?

A. I think not, Mr. Butler. It wasn't intended there should be. That speaks of the state as a whole, that comprises all the roads. Of course, it is apparent, as I have said to you or testified here, the rates upon all the northern lines on hard and soft coal were, and had been, for years, the same. The relationship there was changed, but that don't mean it was changed all over the state although it may have been changed somewhat with other roads.

Q. Well, doesn't this express it, taking the whole state into account, the relation was equalized about in the middle?

A. Well, it may not have been exactly that way on the relation, but that is a very fair statement of the case.

Q. Now, the legislature has adopted the same relation that was established by the order of December 14, 1906?

A. Yes.

Q. That is, Chapter 232 has exactly the same relation of—

A. Just the same.

Q. —rates, one class with the other, as you established in your office?

A. Just the same.

Q. They raised them a little higher, 7.37 per cent?

A. I have no memorandum as to the percentage of the raise; it was an arbitrary percentage which was applied to all the rates.

Q. About seven and one-third per cent?

A. I will ask Mr. Yapp to look it up.

Q. Mr. O'Brien has asked me to call your attention to the relation between hard and soft coal.

Mr. O'BRIEN: No, whether or not the relation between commodities was maintained as to coal. I think the largest reduction was made in coal, but I don't think they did maintain the former relation between other commodities and coal.

Mr. BUTLER: I thought you meant between the two kinds of coal.

Q. But taking coal as one, as I understand it, and its relation to the others, was that relationship substantially maintained, or was it widened or lessened in difference?

A. Well, answering that question, (and I am glad it has been suggested here, that shows that I may have overlooked, probably did, that fact) while it is generally true that the relation between the different commodities was maintained as it would be reflected when all the roads were considered, but taking the question of grain, particularly in the northern part of the state, the reduction is comparatively small upon grain rates, whereas on coal, it is considerable of a reduction, and was so intended; and I may as well answer your question, (which I anticipate,) the reason for that was that that was a commodity, in the opinion of the Commission, which was a

necessity and its use in many instances brought additional business to the companies where it was used in the manufacturing of different products, but particularly because of its need for the people as a fuel, as their absolute necessity; it was thought that if any concession was made in any of the commodities, it ought to be in the rates on coal.

Q. Well, that is the only widening of difference that you have in mind, isn't it, in your schedule?

A. Yes, it is, Mr. Butler.

Q. Or as between the schedules?

A. Yes.

The MASTER: Did I understand you to say that, before the order of the Commission, soft and hard coal took the same rate?

WITNESS: They did, on the three northern lines, but not on the southern lines.

Q. And except as between St. Paul and Minneapolis, Twin Cities and Duluth; they have never had the same rate, have they; that is, of late years?

A. Let me get that clear.

Q. The same rate has not been carried on soft coal as on hard coal between Duluth and Twin Cities, for a good many years?

A. Oh, no. I have before said that the southern part of the state comprised more than half of Minnesota, north and south, and that doesn't include St. Paul and Minneapolis.

Q. Yes, but it doesn't go to Duluth, the southern part?

A. Oh, no.

Q. Half way up the state?

A. North of St. Paul.

Q. Half way between here and Duluth, doesn't it?

A. No, I think not.

The MASTER: That is more east than north?

WITNESS: There is a differential, and has been for years, in the hard-and-soft coal rates, at St. Paul and Minneapolis, but the three northern roads have carried the same rate for all the territory they supply in the northern part of this state on hard and soft coal.

The MASTER: That is the Great Northern, Northern Pacific and Soo?

WITNESS: Yes, sir. Just prior to the making of the order of the Commission, the three northern roads revised their coal rates, and, to a considerable extent (I think I can say generally) they did recognize a distinction between hard and soft coal in the matter of rates and favored the soft coal quite a little; but that was just prior to the order of the Commission, however, under voluntary rates which the companies put in.

Q. About ten per cent reduction, wasn't it?

A. Well, I knew at the time; I don't know.

Q. I think that figure is stated in your report of 1906—

A. It may be true.

Q. —in evidence on the hearing for a temporary injunction. Now, you have told us, in your direct examination, that in different parts of the state, railroads carried at different rates; as I recall it, your idea is that before the orders of the Commission here in litigation, in the northern part of the state, on the commodities, generally speaking, (that is, the seven new classes,) the rates ranged lower than on the same things in the southern part of the state, and that the contrary or converse was true, the situation exactly reversed, with respect to the classes; the northern roads taking or maintaining the higher rates on classes and the southern roads a little lower; am I right about that?

A. Generally speaking, that would be true with reference to the classes or the classified rates, but would not be true with reference to the commodity rates. The northern roads did carry at lower rates upon grain, but their rates were

higher upon livestock and coal. I can't say, just now, about lumber.

Q. Well, grain was the principal commodity from the farms moved in in the north, I suppose?

A. Yes, sir, it was.

Q. And perhaps that was the reason for the lower rate on it, because of the volume; do you so understand it? volume of traffic is one of the elements to be taken into account in getting at the reasonableness of rates, and was it not because of the needs of the people, to which you have referred, and the volume of this particular class of stuff, that the rates were lowered?

A. Of course, I had nothing to do with making those rates, and it would be a guess with me what answer I might give.

Q. They remained in force substantially the same, or were they voluntarily reduced, from time to time, during the last twenty years, in the north on grain?

A. They had been voluntarily reduced. Some reductions, I recall, had been had at the solicitation of the Commission.

Q. So that, between the railroads and the shippers and the Commission, the rates were, as a matter of fact, maintained and remained maintained on grain at a scale somewhat higher to the Minnesota primary markets than the southern roads maintained? Somewhat lower, I mean. That is the fact, isn't it?

A. Yes.

Q. And that was acquiesced in?

A. Now, I would answer that this way; that would be true, so far as its application to the Minnesota terminals is concerned.

Q. I said to the Minnesota primary markets.

A. Well, yes, sir.

Q. And those are the only primary markets where you directly fixed the rates?

A. Yes, sir.

Q. The only ones named in your order, at any rate?

A. Yes; I didn't catch that part of your question.

Q. And the reason for that—was it because of the increased volume of business, the dependence of the people upon grain as products of the soil, in the territory served by the northern roads in Minnesota?

A. I said, Mr. Butler, that I wouldn't feel like giving a guess what influenced the companies.

Q. But, as a matter of fact, Mr. Staples, the Commission, from time to time, had up the matter of rates on grain to Minnesota primary markets from Minnesota fields, in the various parts of the state, during the last score of years, and either by conference with the companies, or orders, or some other way, became parties, in a way, and in a way responsible, for the rates, did they not?

A. Yes, that perhaps has a good deal of truth to it, Mr. Butler.

Q. Now, don't you think a good reason, no matter what the reason was for a lower scale of rates on grain from the northern part of the state than exists in the southern, is that in the northern part of the state there is more grain to carry, the people more dependent upon it, greater volume of traffic, conditions more favorable for its transportation?

A. No, Mr. Butler, I do not think that, at this time, to be the fact.

Q. That has been true in the past? that has been a good reason?

A. I wouldn't like to say in the immediate past, but it has been true, in my judgment.

Q. Ordinarily it is true, is it not, that the particular products of the soil upon which the people are more dependent, moving in heavy volume, ought to take a lower rate than the

same things upon which the people are not so dependent and not moving in so great a volume?

A. That would be true if the people in a large sense were dependent upon that particular product, but the point I wish to make is that that condition is greatly changed; and there is another large element, the population which must be considered and which would have no direct dependence.

Q. Isn't it true that the people in the northern part of the state of Minnesota served by the Great Northern, Northern Pacific and Soo (eliminating the Willmar & Sioux Falls, which runs off to Pipestone) are very much more dependent upon the grain products of the fields than the people of southern Minnesota, we will say south of a line running through Mankato and paralleling the southern boundary; isn't that true now?

A. That would be true, but that does not eliminate, in considering this question in its broad application, that large element of the population which will be found in northern Minnesota which has little or no interest directly in the grain product.

Q. What large class is that in northern Minnesota?

A. A large amount of stock is being grown in northern Minnesota today, and there is considerable manufacturing being done, (I don't mean upon the same scale that it is being conducted in St. Paul,) and there is a good deal of milk being raised, and a great many milch cows being cared for, and the stock shipments show a good many hogs.

Q. So then, as far as affecting the rates on livestock and grain is concerned, you are satisfied that diversification of agricultural interests existing between southern Minnesota and northern Minnesota may now, with propriety and justice, be disregarded?

A. Well, Mr. Butler, I would answer that, but I would follow it with a question-mark.

Q. Well, answer it and we will put down the question-mark or let it go.

A. Literally speaking, that might not be true, but, without doubt, it is growing in that direction very rapidly.

Q. The same is true with respect to lumber, I suppose?

A. Of course, the source of supply of local lumber is northern Minnesota, it is being manufactured and distributed from several points; but all that lumber necessarily comes in competition with the coast lumber, which is distributed all over this state, although not so much in the northern part, by any means, as in the southern part; and there was no attempt, so far as I know, to offer to the people any considerable or any serious consideration in the matter of reduction in the rates upon lumber. I remember, very well, in 1903, when the Commission secured, practically all over the state, a nice little concession from the companies in the way of rates on lumber, and I was opposed to the reduction at that time, did not favor it, and followed the matter up very closely and I am perfectly satisfied to-day that the consumer never got one cent of the benefit, perfectly satisfied of that. Therefore, that would influence me, Mr. Butler, in what commodities, if I were considering lumber with some others, I ought to endeavor to secure a reduction upon, if any should be had.

Q. So, then, I gather that it is proper to take into account, in making a rate in a state, competition in interstate commerce, because you have called attention to interstate lumber as an element in that; am I right in that?

A. Well, I certainly did not mean that, Mr. Butler, in the sense that the rate itself was a factor.

Q. Then should, or should not, competition by the State's authority, when making rates of interstate freight and interstate rates, be taken into account in making the state rates?

A. No, sir.

Q. It should not be?

A. No, sir.

Q. And it should be disregarded, in your judgment?

A. A man might reason in his own mind as he was a mind to, my answer is that it should not.

Q. And you did not take it into account, so far as you were concerned, in making these schedules?

A. No, sir.

Q. With respect to the classes or the interstate rates?

A. Neither one.

Q. Or the commodities,—neither one?

A. Neither one. I am answering for myself.

Q. Yes, I understand, and so far as you know, that was true of the attitude of the board—

A. Yes, sir.

Q. In the making of these schedules—

A. There was no discussion had that would indicate it.

Q. Do you think it was taken into account who pays the freight? You spoke of a reduced lumber rate, that the people procured a concession from the railroad companies which you were opposed to on the ground that the consumer did not benefit by the reduction; now, I want to find out whether generally you hold that, in making local rates in a state, by state authority, the question as to who pays the freight would be an element in determining the amount of freight.

A. I don't think it should be.

Q. You don't think that makes any difference?

A. I didn't say that. I said I don't think it should be taken into consideration.

Q. Why?

A. Because you lose sight of the question of what is a just and reasonable rate.

Q. Well, if the needs of the shipper, and the value of the service to him are to be taken into account, doesn't that involve, of necessity, the need of the farmer on the prairie to get lumber to build a house to live in, shouldn't that be just as much favored as coal to keep him warm after he had built his house to live in?

A. I think my answer to the last question would answer that.

Q. You think it should not be taken into account? that the farmer's need for lumber at a moderate rate should not be taken into account just the same as his need for soft coal?

A. You misunderstood me. My last answer was that you should not take into account who is benefited by the reduction; that is, in the matter of the classes. Now, a reasonable rate or a just rate—and using the two terms to mean the same thing—means that you are getting, throughout, the rate upon a basis that it would be reasonable. As to who is benefited is sometimes very difficult to tell, there are instances where you can trace it out. It is reasonable to assume that the consumer pays the freight. He is not always directly interested in the rate, but he is, indirectly, as a rule.

Q. With respect to the element of cost to the railroad companies, (and now we will confine our consideration to these nine companies which are before the Court in this rate litigation) is not the cost very different on different roads, both absolutely and relatively?

A. Undoubtedly, Mr. Butler, some roads are enabled to do business at a less cost than others, for many reasons, or, at least, for some.

Q. That is, you mean it costs some less to do the same business than it does others?

A. I think I said at less cost than some others.

Q. Now, the Northern Pacific you spoke of as a well-equipped and well-developed property; I think you are willing to

add to that well-managed, are you not?

A. Yes, sir.

Q. It reaches a very high degree of efficiency, in every respect, does it not, in Minnesota at least?

A. In my judgment, it does, Mr. Butler.

Q. The cost on that road is probably the lowest of any, is it not, taking it for hauling the freight covered by these two schedules?

A. Well, in my judgment, Mr. Butler, it ought to be as low as any. I have no way of determining. From the reports of the Company,—

Q. Well, it is fair to assume, is it not, that it is as low as any?

A. I should regard it as a road which ought to have as low a cost, generally speaking, as any of them.

Q. Well, let us assume that it is the best, the lowest cost, for the purposes of the next question, I ask you whether or not, in your opinion, in making a schedule for the state as a whole, the most favored, as far as the element of cost is concerned, should be taken as a test, the most favored of these nine, we will say.

A. No, sir.

Q. Now, it is a fact, is it not, that, in these reports which your Commission requires to be made, from year to year, the railroads do report to you the percentage of operating expenses to earnings, first, with respect to the whole system, inside and outside of the state, (both,) and, next, according to the rules that you have prescribed, localizing the earnings territorially to the state and localizing the expenses territorially to the state, and report the percentage of operating cost within the state to earnings within the state?

A. I think not. That is true as to the system.

Q. That is what I mean.

A. As to the system.

Q. Well, Mr. Staples, are you not in error?

A. I think not. We do recently,—

Q. Well, during the last few years?

A. We undertake to have as much of the expense localized as the companies, I may say, concede they can localize. There is a considerable, or at least some, portion of the expense which the companies will not undertake to localize.

Q. Let us take one step at a time. Now, you require, and have required, for years, and the companies have reported, for years, earnings local to the state (that is, within the state, including interstate and local, both,) according to a rule prescribed by the Commission or fixed by the statute, one or the other?

A. Yes, sir.

Q. Now, do they not also territorially localize their operating costs, according to a rule printed in the form of a report furnished by the Commission to the railroad companies, and then establish the percentage of operating cost within the state to the earnings within the state, localized territorially according to rules prescribed by state authority?

A. Well, as I said before, you get that with reference to the interstate business. When I say "interstate" I refer now to the system.

Q. Well, I wasn't going into the merits of the division, I am asking whether or not that hasn't been done in the manner I have described.

A. Well, I might answer that yes in a general way.

Q. And by all the railroads, for a long period of years last past; that is true, isn't it?

A. I think not.

Q. Well, how long?

A. Well, I would rather look that up; I can't answer that.

Q. Well, let it go, then. Look it up.

A. Yes.

Q. Have you not, as a matter of fact, published for years, with respect to each line reporting to you, the percentage of operating expenses to the earnings, both systematic and within the state, localized according to those rules?

A. We have, Mr. Butler, published all the data, so far as it is supplied to us, yes, sir.

Q. Now, is not the operating expenses of some of the roads once and a half and once and three-quarters what it is on the Northern Pacific within the state?

A. I don't think you would find that difference.

Q. The Rock Island was over eighty, wasn't it, for the fiscal year ending June 30, 1906, and the Northern Pacific under fifty?

A. It was about fifty.

Q. And they vary all the way, don't they, between fifty and eighty?

A. Well, I will not answer definitely upon that, Mr. Butler.

Q. You know, as a matter of fact, do you not, Mr. Staples, that there is a wide range in cost of one road compared with another moving on the rails in Minnesota?

A. I think, in justice to myself, Mr. Butler, I ought to say that I do recognize some roads do, and can, operate and transport freight more cheaply than others, but I want to say that I do not rely upon those reports as a guide, in any sense.

Q. That is the reason I asked the last question. But, independent of the reports, from your general knowledge of the situation, you know the fact to be that the percentage of cost on some of the roads is very much higher than on others?

A. It is higher, undoubtedly, on some, and lower on others.

Q. Both for the local and interstate business in the state?

A. I think that would apply to both.

Q. Now, as far as that difference in cost exists, it has been wholly ignored, has it not, in the making of these schedules, for as much as the schedules are the same on all the roads in all parts of the state?

A. No, sir.

Q. It has not been ignored?

A. No, sir.

Q. Am I right that the schedules are the same?

A. Yes, sir.

Q. So there was no difference made, then, on account of the difference in cost, because there was, in fact, no difference made in the schedules; am I right?

A. I would have to answer that in this way, by saying that it is thought—was thought—I think now, that the rates allowed, or are sufficiently high, to allow to any road the earnings contemplated, or which—

Q. They are intended to have under the law?

A. Yes, sir.

Q. In other words, you think your schedules were so generous as to be sufficient for the least favored, upon which the highest cost obtains?

A. I think so. I don't mean to say that it would give to each and all the roads the same profit.

Q. No, because that wouldn't work out arithmetically. So, then, as a matter of fact, this difference in cost was ignored, except in so far as you placed the rates high enough to be sufficient for the most expensively operated roads of these nine in litigation?

A. That would be true. Of course, the traffic and all other factors, are considered.

Q. Then in the sense that the rates are the same in all parts of the state, the element of cost has been ignored; in other words, there has been no difference made on account of difference in cost obtaining on different roads? All roads

are required to live on the same rates?

A. Yes, sir, that is true.

Q. Now, Mr. Staples, I want to ask you whether or not in this state (now, I will enlarge a little and take in all the roads in the state, whether in litigation or not) there do not exist the greatest differences in conditions properly affecting cost of doing business local to this state.

A. Well, if you go a little further and point out in what respects,—

Q. Well, can you think of none?

A. Well, I don't know as I care to offer criticisms upon the different roads as to how they are managed or how they should be managed.

Q. Well, difference in cost does not imply a criticism of the management, does it, necessarily? if the traffic is dense and conditions are favorable to low cost, a poor management might obtain a very much lower cost than could be obtained by the best management under adverse conditions; isn't that true?

A. Yes, sir. I might think—it might be my personal conclusion—that, to distribute, say l. c. l. shipments, on the Northern Pacific line, because of the character of the settlements, because of the settled or unsettled condition of the country (whichever way you see fit to call it) might necessarily make it much more expensive upon that line to distribute its l. c. l. traffic than on the Chicago Great Western; or, I will take it, as a more fair illustration, on the Milwaukee road; but, in my judgment, the evidence brought to the notice of the Commission, which was very much amplified in regard to the character of service on the Milwaukee and the character of service on the Northern Pacific, would indicate that perhaps the Northern Pacific might distribute that l. c. l. traffic at just as low a cost as the Milwaukee company was distributing its local traffic.

Q. Well, you and I are thinking of a little different thing. Now, it appears, I think, or at any rate, it is the fact, isn't it, that some of the roads of this state earn about $40,000 per mile of track, per annum, while others are down in the vicinity of $3,000 per mile of track, per annum, and what I am trying to find out from you, Mr. Staples, is whether or not, under all the diverse conditions, a schedule of rates that is high enough for the weakest is not too high for the most favored, and, the converse of that proposition, whether or not a schedule that is sufficient and reasonable as between the most favored people would not be too low for the least favored.

A. That might be true.

Q. That is true in this state, isn't it?

A. No, sir.

Q. It is not?

A. I do not think so.

Q. You think that the rates are neither too high on the most favored nor too low on the least favored, in any instance, and they are fair and reasonable as to both?

A. Well, when you use the terms "fair and reasonable"—

Q. Well, I will call it "right," if you want to.

A. Are you confining that relation of the rates to the Company alone, or the different companies,—the relation of the rates?

Q. Between the Company and the authority that fixes the rate, I will put it.

A. The rate might afford to one company, and undoubtedly does, an opportunity to earn, in the aggregate, a very much better return than to some other company. Undoubtedly, that is true.

Q. Two or three times the rate of return, isn't it?

A. I wouldn't like to say that; I don't think so much.

Q. In determining the reasonableness of a rate, it has to

be taken into account and determined, has it not, whether or not that rate is confiscatory? By confiscatory I mean so low as not to yield a reasonable return upon the value of the property devoted to the use required to perform the service.

A. I shall have to assume, Mr. Butler, that your question means to cover the question as the aggregate earnings would be affected by any rate. You say a rate—

Q. A schedule for Minnesota, if you like it better.

A. All rates are necessarily involved in the question of what shall be reasonable earnings.

Q. Well, we will say a schedule of state freight rates covering the whole gamut.

A. Yes; I don't suppose I know, definitely,— if I did, I think I would know more than anybody else does—what the expression "reasonable earnings" does mean.

Q. Well, you have no idea of that?

A. Yes, I have some idea of it.

Q. You admit that, on the schedule of state rates?

A. Yes.

Q. So, in order to determine the reasonableness of a schedule of state rates, it is necessary to determine whether or not they will yield any return upon the value of the property doing the business?

A. Yes.

Q. Now, it is true, isn't it, Mr. Staples, that the systems of roads involved in this litigation touch about twenty-two states?

A. Well, I am willing to take, your—

Q. Well, I think it is about that, eighteen to twenty, anyway.

A. Well, I could determine but I don't know, Mr. Butler.

Q. Ranging from the—that is, roads in Minnesota extending almost to Hudson's bay, on the Canadian Northern

and the Rock Island, and the Illinois Central, I think, touching the Gulf of Mexico.

A. Yes.

Q. Now, have you ever, in your own mind, established any rule for ascertaining what amount of the whole system expenses should be charged territorially to the state of Minnesota, and, if so, can you state the rule so we can do it according to your method?

A. Yes, sir.

Q. All right, go ahead; state it.

A. You should charge to the state of Minnesota the cost of doing Minnesota business.

Q. How do you get at that? Tell it, now, so that I can take a pencil and figure it out. You have to first localine the state, don't you?

A. Yes, sir.

Q. How do you do that—localine territorially to the state?

A. The companies themselves,—

Q. No, Mr. Staples, I would prefer, if you have made up your mind how that, in justice, a rate ought to be done, you will tell us and we will take up the justification for that afterward, if any justification be needed.

A. The companies themselves, have determined, for their own information and guidance, what items can be properly localined, allocated, so to speak, what items of expense can properly be charged to the local business and determined with a degree of accuracy. My own judgment is, without undertaking to give it in detail, (for I am not able to do it now,) that you can reasonably allocate from sixty to seventy per cent. Now, the remaining per cent of the cost of doing the state business must be determined upon an arbitrary basis; but I believe a basis can be established which will be accepted as fair by the roads, and my judgment is, as I said, that it is a practicable and a feasible matter to determine the

cost of doing state business.

Q. Did you ever do it?

A. No, sir.

Q. Did the Commission ever do it? Was it ever done by state authority in this state?

A. No, sir, nor any other authority.

Q. Nor any other authority. You never knew it to be done in your life, Mr. Staples, did you?

A. Yes, I did. I did, and while in this testimony in this case,—

Q. Well, who did it, now, before this litigation?

A. Well, I won't say that anybody did it definitely, Mr. Butler, but very successful attempts were made to do it.

Q. Mr. Staples, did your Commission, or this State, determine the value of any of the property of any road that ought to be charged to the business of any road in this state that is local to this state?

A. It is perfectly evident, Mr. Butler, that they did not definitely, or determine any definite sum.

Q. Did you establish the amount of expenses for any year for any road within the state for all of its business, freight and passenger, within the state?

A. Not definitely.

Q. Approximately?

A. Yes, sir.

Q. Will you furnish me the figures?

A. I can't do it.

Q. Can you tell me—

A. I can't do it at all, Mr. Butler.

Q. No, nor you never could, could you?

A. I said it was done approximately, upon a percentage basis.

Q. How much of the value of the Northern Pacific road

did you allow to the passenger business local to the state of Minnesota?

A. I can't answer you.

Q. Can you at the next session?

A. No, sir.

Q. Can you ever, at any time?

A. I said we did approximately upon a percentage basis.

Q. Well, can you give us the approximation?

A. No, sir.

Q. Could you at any time?

A. I could at one time have given you the percentage basis which I used.

Q. Can you give us the per cent that you used?

A. No, sir.

Q. Can you tell us how much of the whole value of the Northern Pacific road, or of any road, you allowed to class business local to the state?

A. I don't understand that question.

Q. Well, the whole value of the plant in the state is to be divided, I take it, to the business done, first the interstate and then the local.

A. I will answer your question, no. I understand it now.

Q. Was that ever approximated?

A. No, sir.

Q. Was it as to commodities?

A. No, sir.

Q. Or any one of the commodities?

A. No, sir.

Q. There was never, with respect to any of these roads, was there, a determination of the value of the road before the fixing of these rates?

A. I said no.

Q. There was never an attempt to divide that between the

local passengers (the local costs) and the local commodities, was there?

A. My answer that it was not definitely valued would answer that question; no, sir.

Q. Not approximated, was it?

A. Well, no, sir.

Q. Now, Mr. Staples, was the total operating expenses in Minnesota ever divided between the passenger business that is local to the state and the class business that is local to the state, or the commodity business that is local to the state?

A. Approximated on a percentage basis.

Q. Can you give me the percentages on the Northern Pacific?

A. No, sir, I can't.

Q. Could you ever do it?

A. Yes, sir.

Q. Did you have them?

A. I had them as I worked them out.

Q. Made a matter of record?

A. No, sir.

Q. A matter of determination?

A. A guidance for me.

Q. Did the other commissioners see them?

A. I don't know.

Q. Were they submitted to anybody?

A. No, sir.

Q. Any evidence taken on that point?

A. Oh, yes, sir; lots of it.

Q. You have that evidence?

A. Yes, sir.

Q. As to the amount that was chargeable?

A. Not the amount, no, sir.

Q. The relation of the amount?

A. Yes.

Q. The relation of the amount, but not the amount?

A. No, sir.

Q. So, then, without determining the value of the road, the value of the use of the property which should be charged, either to passengers locally or classes locally or the commodities locally, and without determining the cost of either locally, these rates were fixed by your Commission, were they not?

A. I didn't say that.

Q. Can you give us, with respect to any one of the roads, any one of those items, or any one of the percentages used to get at the items?

A. No, sir, I can't.

Q. Now, Mr. Staples, as a matter of fact, you hold, do you not, that it is impossible to determine the cost of any line or kind of traffic?

A. No, sir.

Q. You made a speech before the Commissioners Association, since this suit was commenced, didn't you?

A. I presume I did.

Q. Now, in that speech did you not say, in substance, that it was not necessary to tell those who know about the subject why it cannot be done, to-wit, to establish the cost of any kind of line or class of traffic?

A. I think that is true.

Q. That is the fact; you hold that that can't be done, don't you?

A. Yes, sir, in the sense that I used it I do.

Q. And you hold, further, do you not, and so stated there, that in the matter of regulating rates, making rates, it is not necessary to get the cost, do you not?

A. No, sir.

Q. You don't hold that?

A. I do not.

Q. I thought you said that?

A. Never.

Q. Now, I have that speech, and I ought not to have spoken of it,—I think I have it.

A. I never said it in the sense you are now using it.

Q. Perhaps I haven't it with me, but if not, I will call your attention to it the next time we meet. I haven't the speech with me, but I think I have the words. Well, it is on pages 2 and 3, I think, Mr. Staples. Have you the pamphlet?

A. No, I haven't.

Q. Well, you remember the speech to which I refer?

A. Well, I think I do.

Q. It was in 1907, before the Association of Railroad and Warehouse Commissions.

A. Yes.

Q. And my recollection of that statement was that it wasn't necessary to explain to anyone having knowledge on the subject why it was impossible to get at the cost of any class, kind or line of traffic; and, further, that you expressed the view that it wasn't necessary to get at the cost that there be efficient and proper regulation.

A. I hold to that now, but I am sure that you and I haven't the same thought in mind.

Q. Well, you hold, then, to the doctrine that in order that there be efficient ratemaking by a state commission, it is not necessary to get at the cost to a railroad of doing the business covered by the rates in question?

A. Not at all, no, sir.

Q. You don't?

A. Not for one minute.

Q. Then what is it you do hold in that regard?

A. You, Mr. Butler, in quoting from my remarks, I think, have quoted me verbatim, or almost so, but that would mean that it is not necessary for the Commission—it is impossible

for the Commission and impossible for the company to determine the cost of doing the transporting of the coal transported upon its lines.

Q. Or the wheat?

A. Or the wheat.

Q. Or the stock?

A. Or the stock; taking each separately, as a class.

Q. Or any one of the seven new classes?

A. Yes, sir.

Q. Or any one of the ten old classes? Any one of the ten old classes?

A. What do you mean?

Q. Under the Western Classification there were ten classes.

A. Yes, I think that, too.

Q. So you think it impossible for the state, or the railroad company, to establish the cost of any one of these seventeen classes here in question?

A. Seventeen? Yes, any one—yes, I do.

Q. Any one of the seventeen?

A. Yes, I do.

Q. Or of the merchandise l. c. l.?

A. I haven't said that.

Q. Well, do you? I am coming up a little.

A. I think you can approximate the cost of doing that business.

Q. Of the l. c. l.?

A. Yes, sir.

Q. And approximate the cost of the rest?

A. Yes, sir.

Q. Did you?

A. I have answered you.

Q. Well, I have forgotten it.

A. Upon a percentage basis, yes.

Q. Can you tell us what percentage of operating expenses

to the earnings on the l. c. l. business you allowed for the Northern Pacific?

A. No, Mr. Butler, I wouldn't want to undertake to say, nor I don't want you to get the idea that that was done particularly with reference to the Northern Pacific any more than arriving at a conclusion based upon the returns made by the Company and by the evidence brought before the Commission by the officers of the Company.

Q. Now, Mr. Staples, you will tell me, I am sure, if I can ask you right, what the fact is: in determining the rates that you allowed for l. c. l. business in this class schedule, did you determine the proportion of the value of the property of any road that should be charged to that business, the cost of that business as a whole, the cost of that business as compared with the revenue which the rates would give, and, if you did, Mr. Staples, can you produce that information to us?

A. I did not do, Mr. Butler, what you have indicated.

Q. It wasn't done, was it?

A. Not in the way you have indicated, no sir.

Q. Now, did you attempt to fix the proportion of the value of the plant of each company that would be devoted to class business, the whole ten classes?

A. No, not in that way, either, Mr. Butler.

Q. Did you attempt to fix the cost of doing the class business on any road?

A. No, but a percentage relation was approximately between the class business and—

Q. Relation between revenue?

A. Between the question of cost of operating, between the class business and the commodity business.

Q. Yes, I understood that from our former questions, but now I mean the percentage of operating expenses to do the class business as compared with the revenue derived from the class business. You understand me now: it would take

half the revenue, 75 per cent, 80 per cent, all of it, or what?

A. I haven't the ability, Mr. Butler, from memory, to answer that question, but I repeat my former answer or statement, that an approximate percentage relation was undertaken between the cost of doing the class business and the commodity business.

Q. That isn't my question—between the cost of doing the class business and the revenue to be derived from the class business.

A. The Commission, Mr. Butler, never had knowledge as to the revenue derived from the class business, definitely. We had a percentage knowledge, as was indicated by the various witnesses appearing for the companies.

Q. Did you ever have definite knowledge as to the total local intrastate earnings in Minnesota?

A. I think we had.

Q. Hasn't it developed that what you had was in error 49 per cent on the Northern Pacific and probably a corresponding per cent on every other road? You know what I refer to, don't you?

A. No, I do not.

Q. The strictly local business to the state, as reported, included in the Northern Pacific case, by the testimony of Mr. Johnson, about half too much business called interstate business, which was local to the business of the state on the Northern Pacific, making an error of 49 per cent; hasn't that come to your attention at all?

A. Well, if so, it has escaped me.

Q. Well, you and I talked of it once.

A. I am not definite upon that.

Q. Did you ever, Mr. Staples, attempt to ascertain the cost of doing the local freight business covered by these two schedules, either separately or together?

A. Do you refer to the new schedules?

Q. Yes, the business covered by them.

A. Now, if you will repeat that question.

Q. Did you ever attempt to get at the cost of doing the business covered by the two freight schedules in litigation here?

A. No, sir.

Q. You couldn't do it, could you, and believe it can't be done, don't you?

A. I have said I believe it can be done.

Adjourned until Wednesday, at 2 P. M., February 24th.

FEDERAL BUILDING, St. Paul, Minn., Wednesday, February 24, 1909, the hearing was resumed at 2 P. M.

CHARLES F. STAPLES,
recalled for further cross-examination, testified:

By Mr. BUTLER:

Q. Mr. Staples, I call your attention to the report of your Commission for the year 1906, or to a book purporting to be that, and ask you if the book I submit to you is that.

A. Yes, sir.

Mr. BUTLER: We offer in evidence, from page 11 thereof, the following:

"COMMUNICATION TO THE LEGISLATURE. Report on rate reductions.

"Although the annual report usually includes no record beyond the 30th of November, the date for closing each year's report, the issuance of their order on December 14th, 1906, by the Commission, reducing commodity rates, has prompted them, in view of its importance, to include it in this report. The Commission has also prepared a brief report of its labors under Chapter 350, general laws of 1905, which is hereto appended

and will be submitted to the legislature at its forthcoming session,

"To the senate and house of representatives of the state of Minnesota:

"Gentlemen: The Railroad and Warehouse Commission would respectfully report briefly the results of the work accomplished under Chapter 350, general laws of 1905, being the joint resolution requesting the Commission to take up the question of reasonable freight rates in the state of Minnesota, particularly the class rates.

"A careful investigation into the question has been made to determine the reasonableness of rates, both class and commodity, and also to find what seems to be the fairest plan to adopt in making a schedule of rates, both as to railway companies and the people, resulting in an order made Sept. 7th, 1906, reducing class rates from twenty (20) per cent to twenty-five (25) per cent. This order became effective Nov. 15th, and has been accepted by the railway companies, and the people of the state are now enjoying the benefits from the same.

"On December 14th, 1906, a second order was made, reducing commodity rates on the principal agricultural products, including coal and lumber. The reduction averaged from ten (10) per cent to twenty-eight and one-half (28½) per cent, the percentage of reduction varying on the different commodities, and is in addition to the reduction made on coal and grain in November last. This order will be effective January 26th, 1907, and will result, in the opinion of the Commission, not only in a great saving to the people of the state in freight charges, but also in securing to the people a schedule of rates which is equitable and fair to all parts of the state, and will remove all grounds for reasonable cause for complaint of discrimination between localities, the aim being to give all a fair show.

"The full benefits to the public can only be appreciated by

a careful and thorough examination of the new schedule—comparing them with the old ones.

"In connection with this work, the Commission is conducting the work of having the railway properties in the state valued, as a basis for determining what are reasonable earnings for the various companies.

"Your closest scrutiny and examination of these orders and schedules and a consideration of the operation and effect thereof, is desired by the Commission.

"Respectfully submitted,

"By order of the Commission,

"A. C. Clausen, Secretary."

And further offer in evidence, from page 21 thereof, the following, under the caption, "Merchandise Rates Case."

"These tabulations, together with a proposed schedule of reasonable maximum merchandise rates prepared by the Commission, were finished during the latter part of December, 1905, and on the 20th of that month the Commission gave notice to the various railway companies that the hearing would be continued on Tuesday, January 16th, 1906."

And from page 23 thereof, also found under the caption above mentioned, to-wit, "Merchandise Rates Case," the following statement:

"On September 1st (meaning September 1, 1906), the final adjourned hearing took place, at which several witnesses were examined, after which the Commission, on advice of Attorney General Young, ordered the case closed without any further testimony and advised all parties concerned that the rate schedule proposed by the Commission would be put into effect.

"On September 6th, 1906, the following order of the Commission, together with Exhibit A, was served on the Chicago & Northwestern Co., and similar orders were served on the other railroad companies enumerated below:

"Duluth, Missabe & Northern Railway Co., Duluth & Iron Range Railroad Co., Minneapolis, St. Paul & Sault Ste Marie Railway Co., Chicago, Rock Island & Pacific Railway Co., Chicago Great Western Railway Co., Great Northern Railway Company, Wisconsin Central Railway Company, Chicago, Burlington & Quincy Railway Co., Chicago, St. Paul, Minneapolis & Omaha Ry. Co., Minneapolis & St. Louis Railroad Co., Northern Pacific Railway Company, Chicago, Milwaukee & St. Paul Railway Co., Minnesota & International Railway Co., and copies of said order and exhibit were also sent to the secretaries of the commercial clubs of twenty-one large towns of the state."

Q. After which follows the copy of the order of September 6th,—is it not, Mr. Staples?

A. Yes, sir.

Q. The schedule referred to on page 21 of this report as having been completed December 5, 1905, is the very same schedule on the class rates which was afterwards and on September 6th, 1906, promulgated by your commission?

A. I think it is.

Q. There isn't any doubt about it, is there?

A. Not in my mind, as I recall it; it is identically the same.

Q. So this schedule was prepared, in its final form, as far as the amount of rates is concerned, prior to the taking of any testimony whatever by the Commission?

A. I wouldn't like to say that.

Q. On this point?

A. No, sir.

Attorney-General YOUNG: It was a hearing in the nature of an order to show cause why those rates should not be put in.

Mr. BUTLER: I will come to that.

Q. Mr. Staples, before the completion of the schedule, in December, 1905, had any testimony whatever been heard by

the Commission on the subject of the class rates and of the proposed schedule?

A. Upon the question you ask, Mr. Butler, I wouldn't attempt to testify now, as to formal hearings, without the record before me. That is too long ago for me to recall.

Q. Will you examine the report, on page 21 and the following pages, 22 and 23, and see if I am not right in the inference implied by my question, to-wit, that the schedule which was put in force was prepared just exactly as it was promulgated before the hearing of any testimony upon the subject?

A. I do not think this report, Mr. Butler, would show that fact.

Q. You are not able to tell from the report?

A. Well, I will read it all, if you wish me to. I don't think so.

Q. I think I can call your attention to something. I wish you would look that over and see if you are not able to answer that.

A. I will say this; that the investigation undertaken by the Commission was begun very soon after the close of the session 1905, and was continued through the summer, before any schedule of rates was ever promulgated by the Commission.

Q. Now, isn't it a fact that there wasn't a word of testimony offered on this subject until after the Commission, from such investigation as it did make, had made out the schedule and furnished a copy of it to each and every road, and wasn't all of the testimony taken after the furnishing of the completed schedule which was subsequently promulgated?

A. I said before, Mr. Butler, that whether any formal hearings were had, before this tentative schedule of rates was submitted to the companies, I cannot answer at this time, but do recall distinctly that after such investigation as the Commission made was carried out or completed, the Commission did prepare this schedule of rates and submitted it to the companies,

and then the whole question was opened up and testimony taken.

Q. General Young is right, then, that it was in the nature of an order to show cause you prepared?

A. That was the intention.

Q. You prepared your schedule, in 1905, from such information as you gathered, and completed it in December of that year, and subsequently, beginning in the spring of that year and running through all the summer, testimony was taken at various times until September 1st, when, on the advice of the Attorney General, no further testimony was heard, and the parties were told that the rates were going in, and they did go in, on September 6th, as far as your order could put them in?

A. That statement is true.

Attorney General YOUNG: Well, the testimony that is referred to there, (if you will let me explain) was testimony on behalf of shippers; all of the railroads had been heard, and there was nobody's testimony shut out, was there?

WITNESS: That is true.

Attorney General YOUNG: There were some shippers wanted to hold the thing open and we refused to hold it open any longer.

Q. Now, let me see if I can refresh your recollection, Mr. Staples. I am confining myself to testimony: was there any testimony offered by any railroad company to your Commission before the completion of that schedule in December, 1905; if so, what company and who was the witness?

A. I have testified, Mr. Butler, that I do not think any formal testimony was taken before the completion of this tentative schedule of rates. That is my best memory.

Q. Yes. That doesn't harmonize with my understanding of what General Young just said.

A. I think it is in perfect consonance with what General Young just said.

Attorney General YOUNG: You don't understand me: if there is any doubt about that, the order to which you called attention, refusing to postpone the case for further testimony was an order refusing to hear further testimony on the part of shippers who were claiming a greater reduction.

Mr. BUTLER: All right, I will come to that occasion.

Q. Now, the railroad companies who appeared and offered testimony, after your schedule had been completed and served upon them, were represented by Mr. C. A. Severance, of the firm of Kellogg & Severance?

A. Yes.

Q. He spoke for all the companies, as attorney?

A. Yes.

Q. Now, on September 1st, the taking of testimony closed, as far as testimony was heard, and was closed on the advice of the attorney general, no matter who was offering the testimony, whether shippers or carriers?

A. Yes, sir.

Q. Now, at that time, do you not recall that application was made by the counsel of the railroad companies for time to prepare himself that he might argue to your Commission upon the question of the propriety of making the order which you did make, and was not that request refused, and were not the parties then and there told by the Commission that the thing was closed as far as hearings were concerned and that the rates would be put in just as they had been made out in the December before?

A. Yes, sir.

Attorney General YOUNG: He was told that he could be heard then, if he wanted to, but there was to be no further testimony.

Q. I get this by hearsay, but was he not told that the order

would go in, but he could be heard afterwards if he liked?

Attorney General YOUNG: Well, he wanted time.

WITNESS: He wanted time, Mr. Butler, and the counsel for the shippers—

Q. Wanted time?

A. Wanted not only time but to put in more testimony on their side. All the testimony that was desired to be put in, upon the part of the railway companies, was heard, and your statement is true except that it does not cover the whole circumstances.

Q. Well, of course, there were lots of circumstances occurring up there, that summer, and we won't take time to go into them.

A. Not at my request.

Q. No, against your will, I think, many of them. I think the shippers and receivers association was represented.

A. Quite so.

Mr. BUTLER: Now, for the purpose of showing, chronologically, changes in the rates, as far as may be, we offer the following, from page 28 of the report of the Commission of 1906, under the caption, "REDUCTION IN GRAIN RATES."

"On August 13th, 1906, the Commission received a joint application from the Great Northern, Northern Pacific and Soo Line railways, for permission to reduce their rates on grain in Minnesota, approximately ten per cent, to the terminals from points more than fifty miles distant from the terminals, taking effect September 1st, 1906.

"On August 20th, 1906, the Commission advised the companies, granting authority to make the reductions and to put in the rates as outlined above, with the understanding that said reductions would in no way interfere with the pending investigation by the Commission as to the reasonableness of the grain rates in this state.

"Tariffs were filed showing the reduced rates, and the same became effective September 1st, 1906."

On page 29, following that last quoted, under the caption, "REDUCTION IN COAL RATES."

"On September 15th, 1906, application was received from the Northern Pacific and Soo Line railways, respectively, asking the consent of the Commission to reduce the rates on hard and soft coal from the terminals of Duluth, Minneapolis, St. Paul and Minnesota Transfer to points in Minnesota, which was granted on September 18th, 1906, with the distinct understanding that said reductions would in no way interfere with the pending investigation by the Commission as to the reasonableness of the coal rates in this state.

"The Great Northern Railway Company was a party to this agreement, but did not file an application on account of their business being interstate.

"The tariffs were filed with the Commission showing the reduced rates, and went into effect on October 22nd, 1906."

Q. Now, Mr. Staples, are the reductions in the grain and coal rates, referred to in the last statements put in evidence, the same reductions which are referred to on page 11 of the report in the statement therein found as follows, to-wit, "The reduction averaged from ten per cent to twenty-eight and one-half per cent, the percentage of reduction varying on the different commodities and is in addition to the reduction made on coal and grain in November last?"

A. I haven't any right or reason or justification, perhaps, to doubt that report, Mr. Butler, but when you first read that language, I doubted very much if the percentage of reduction was figured upon the reduced rates which were put in by the northern roads so far as its applying to them is concerned. In the southern part of the state, there were very few reductions

made, and, of course, that would not be material in the case of those roads.

Q. Well, I merely wanted, Mr. Staples, to get at the reference made,—and, Mr. Reporter, if you will read my former question,—see if that is not susceptible of a yea or a nay.

A. I cannot answer it either way, Mr. Butler. That is what I have been trying to explain.

Q. Was there any reduction of grain and coal rates in November, 1906?

A. I will answer it this way: if it does apply to any reduction it would be the one you read last.

Q. If it is in addition to any reduction?

A. Yes, sir, it would be in addition to that.

Q. Now, those reductions,—one took effect, on grain, September 1, 1906, and the other October 22, 1906?

A. On coal.

Q. On coal. Now, there were no reductions on grain and coal in Minnesota in November, 1906, whereas, you made your order under date of December 14, 1906; so that, is it not perfectly plain that, in the report to the legislature first read, from page 11, the phrase, "in addition to the reduction made on coal and grain in November last" means the reduction on grain September 1, 1906, and coal October 22, 1906?

A. I think it is, Mr. Butler. I think that was the intention.

Q. Well, that is what I wanted to get at.

Attorney General YOUNG: That order never went into effect. That order was all abrogated. Why waste time on that?

Mr. BUTLER: Well, I will come to that, and I will show the relation of that to the act.

Q. So that, in 1906, the order of rate reductions in Minnesota was as follows: Grain reductions, on application of Great Northern, Northern Pacific and Soo, under date of August 18, 1906, effective September 1, 1906; on coal, on application of Northern Pacific and Soo, the Great Northern joining in the

agreement, under date of September 15, 1906, effective October 22, 1906; next, the class rates schedule here in controversy, under date of September 6, 1906, effective November 15, 1906; next, the commodity rates order, referred to on page 11, already in evidence, under date of December 14, 1906, to take effect January 25, 1907; which latter act or order or schedule, having been enjoined temporarily pending litigation, on the suit of the railroad companies, was abrogated by act of April 18, 1907, known as Chapter 232?

A. Yes, sir.

Q. And the two-cent passenger law was passed April 4, 1907; am I right?

A. It was in April, I wouldn't say the date, I don't know.

Q. Yes. Well, that is the date. And on May 3, 1907, the Commission made the order fixing the in-rates to certain distributing points, which order and rates are here in litigation and set out in the bill of complaint in this case?

A. I know about the order; the date I wouldn't be certain about, Mr. Butler.

Q. I will call your attention to it—April 4th—to take effect June 3, 1907.

A. Yes, sir.

Q. And that involved a reduction in like per cent as the reduction made by the order of September 6, 1906?

A. Just let me look at it again, if you please.

Q. It is simply a supplement to it, to keep in balance the old relation of rates.

A. Well, I know all about that order, Mr. Butler, and it isn't material in the record, but I am surprised; this is the first intimation I have had that that was in controversy in these cases at all.

Q. Yes, it is in the bill of complaint.

A. All right, that is not material, but you evidently misapprehend the purport of that order. It has no relation to, and

is not made upon the basis of, the merchandise rates, in any sense of the word.

Q. Well, let me see, I think we mean the same thing exactly—

A. Perhaps so.

Q. —and I may not say it in the right rate-making way. Prior to your order of September 6, 1906, there had been established certain distributing centers or terminals, among which, on the Northern Pacific road, was East Grand Forks, Fergus Falls, Sauk Center, Crookston, Breckenridge, St. Cloud, Thief River Falls and Moorhead.

A. Yes.

Q. And to those centers or terminal points were fixed certain in-rates on certain carload class stuff?

A. There had been, prior to the order,— .

Q. Yes, sir.

A. —which were on a lower basis than the—

Q. Than the schedules existing?

A. —which were on a lower basis than distributing rates which were observed by the companies from all the distributing centers.

Q. Your order of September 6, 1906, did not deal with the in-rates to those distributing centers?

A. No, sir, further than to indicate—

Q. That later on you would consider them unless the railroads themselves reduced?

A. Yes, sir, that is right.

Q. The railroads having failed to reduce the in-rates to those distributing centers, the Commission took up the matter and made the order of May 3, 1907, effective June 3, 1907, and by that order fixed the schedule of rates?

A. That is right.

Q. And defined the combination of stuffs, beginning with pickles, etc., that would make a carload?

A. Yes, sir, it was confined to the carload rates.

Q. So that the reduction that you made in the in-rates by the order of May 3, 1907, was a reduction corresponding to the reduction which you made in the class rates of September 6, 1906, to keep in substantially the same relation one to the other as had existed before your order?

A. That was the intent of the Commission.

Q. And you believe that the reduction of rates of these so-called in-rates was substantially the same per cent reduction as the reduction of the class rates themselves by the September, 1906, order?

A. Well, I wouldn't like to venture an opinion upon that.

Q. I didn't want to bind you, but I wanted to see if it wasn't substantially so, so as to avoid the time and trouble—

A. I would be inclined to think that it was not, Mr. Butler, but—

Q. Would you venture an opinion as to the percentage of reduction?

A. No, I don't think that I ever made any calculation, or had any made, or have any knowledge upon which to base any memory upon that question. I don't believe I—

Q. Can you in any way refresh it between now and morning? It is adjourning time now.

A. That could be worked up easily, approximately what that reduction was.

Q. I didn't intend to ask you to do any particular work, but you report that the reduction on the class rates was twenty to twenty-five per cent?

A. Yes.

Q. Was this twenty to twenty-five per cent, or fifteen to twenty per cent?

A. I will have to say I have no knowledge, but I think that that can be approximated closely without much work.

Adjourned until March 1st, at 10 o'clock A. M.

FEDERAL BUILDING, St. Paul, Minn., Monday, March 1, 1909. Hearing resumed.

CHARLES F. STAPLES,
recalled for further cross-examination, testified:

By Mr. BUTLER:

Q. Mr. Staples, I show you a book which is marked, on the back of it, "Minnesota, 1907, Railroad & Warehouse Commission;" is that the Report of your Commission for the year 1907?

A. Yes, sir.

Mr. BUTLER: From page 20 thereof, we offer the following:

"A REVIEW OF THE MERCHANDISE AND THE COMMODITY RATE CASES.

"The merchandise rates promulgated by the Commission September 6, 1906, which are reported in full in the annual report of that year, pages 24 to 26 inclusive, were adopted by the railroad companies and have been, since the date they were made effective, the maximum rates charged on merchandise. These rates made an average reduction of the merchandise rates in existence at the time of the order of from 20 to 25 per cent and also effected a more equitable adjustment of the rates between different sections of the state, placing the country stations on an equality with the larger cities.

"The commodity rates adopted by the Commission in its order of December 14, 1906, fully reported on pages 30 to 35, inclusive, of the annual report of 1906, never became effective. This schedule made an average reduction on the different commodities as follows: Wheat, flaxseed and flour, 16.5 per cent; corn, oats, rye and barley, 25.5 per cent; lumber, 18.2 per cent; cattle, 11.8 per cent; hogs and sheep, 12.3 per cent; hard coal, 23.9 per cent; soft coal 28.4 per cent; or a net average reduction on all commodities of 17.37 per cent.

"In January, 1907, the railroad companies affected by this order procured an injunction from the United States Circuit Court of the district of Minnesota forbidding the Commission to put these rates in force. The legislature met in January, 1907, and during its session enacted the two-cent passenger law, fixing the maximum rate to be charged for the transportation of passengers on railroads within the state at two cents per mile. The legislature, having then concluded that in view of the reduction in passenger rates it would be unreasonable to also enforce the commodity rates fixed by the Commission, enacted Chapter 232 G. L. 1907, fixing a new schedule of commodity rates to supersede those established by the Commission. A copy of this law will be found below. Its effect was to raise the Commissioners' rates 7.37 per cent, and resulted in a net average reduction of 10 per cent on all commodities."

Q. Heretofore in your testimony you gave the impression, not assuming to be accurate, that the schedule fixed in Chapter 232 of the general laws of 1907, was, as respects each rate in the schedule, raised 10 per cent above each rate in the schedule of the Commission under date of December 14, 1906. Now, you were in error, were you not, with respect to the percentage each rate in the order of your Commission of December, 1906, was by the legislature raised 7.37 per cent?

A. Yes, according to that record, that would be the per cent of raise. What I said in my direct examination was, that the per cent of raise between the schedule of rates promulgated by the Commission and that enacted by the legislature was, to the best of my memory, 10 per cent, and stated that if that were the per cent used, each rate in the schedule was raised that per cent. It seems, from this record, that the per cent of raise was 7.37. Now, that applies not to the original rates but to the new schedule of rates.

Q. Yes, that is the way I understood it.

A. The idea being that the relation between the rates en-

acted in the new law and that promulgated by the Commission should continue to be the same.

Q. Yes; and the principle and plan upon which the schedule found in Chapter 232 is constructed, is exactly the same principle and plan as the schedule constructed by the Commission which was contained in its order of December 14, 1906?

A. So intended in that plan of making it, did not change the principle.

Mr. O'BRIEN: Mr. Staples, do you mean that each separate rate found in the Commissioners' order of December 14th was increased 7.37 per cent by Chapter 232?

WITNESS: If my memory serves me right, that is what I intend to say, that that was what was done and all that was done in the preparing of the new schedule.

Q. And an examination of the schedules will disclose, (the comparison of the two) except in so far as they may be modified by getting even cents, disregarding the decimals?

A. Yes, sir, the fractions; there might be mills added or dropped off of the different rates, which would, seemingly, change that slightly.

Q. Mr. Staples, I will ask you, during the noon adjournment, to look at the bill of complaint in this case and see whether or not the order of May 3, 1907, relating to in-rates to certain distributing points, is correctly set out in the bill, so as to save incorporating the order into the record.

A. Yes, sir.

Q. You can do that conveniently?

A. Yes, sir.

Q. And that order has been in effect since the date prescribed for its taking effect, has it not?

A. Yes, sir. There was never any question about putting the order in.

The MASTER: That is not enjoined?

Mr. BUTLER: There is a suit to enjoin it, but no temporary

injunction. It follows, and is related, in a way, to the merchandise order of September 6, 1906, against which no temporary injunction was issued.

Q. This order, as I understand it, applies only on the merchandise therein specified, from the Twin Cities to the points named in the order, and also from Duluth to the points named in the order?

A. Yes, sir.

Q. And does not apply to intermediate points?

A. No, sir.

Q. And are purely in-rates?

A. Yes, sir; rates put in for the purpose of supplying distributing houses, wholesale houses.

Q. At the points named?

A. On certain goods, at carload rates prescribed in the order.

The MASTER: When you say in-rates you mean rates into those places named?

WITNESS: Yes, sir.

Q. And the rates out of these places named are determined by the Commissioners' order of September 6, 1906?

A. Yes, sir.

Q. You have, as I asked you to do, furnished a statement showing the effect of such rates upon the rates theretofore existing?

A. I have had a statement prepared showing the original rate, the new rate, the percentage of reduction in each case, both from the Twin Cities and Duluth to the points named, and also showing the average reduction.

Q. Then, as I understand it, before your order of September 6, 1906, the railroads themselves had made certain in-rates, that differed from their terminal and distance rates, to certain points, on the various roads?

A. Yes, sir.

Q. Called jobbing points?

A. Yes, sir.

Q. And did you add any new points, in your order of May 3rd, or do you now recall?

A. I do not think so; possibly one, but the intention was to cover the points which had been covered. I may say, however, there have been points added since the date of this order. Evidently not, Mr. Butler, because the old rates are indicated here in every case.

Q. And the points on the Northern Pacific railway taking the in-rates under this May 1907 order, are East Grand Forks, Crookston, Detroit, Taylors Falls, Breckenridge, Moorhead, Brainerd, Sauk Center, St. Cloud?

A. Yes, sir.

Q. Was there any change made in the articles or classification or combination of carload lots that were subject to the in-rates prescribed in this May 1907 order?

A. There may have been some slight changes. If there were any, the changes were agreed to between the companies and the parties to be served.

Q. Now, these rates in the May 3, 1907 order, were objected to by certain business interests, jobbers, (particularly in the grocery line) at the Twin Cities and at Duluth, were they not?

A. Yes, sir.

Statement produced by witness marked "Complainant's Exhibit 69—Staples," was here offered in evidence.

Mr. BUTLER: We offer in evidence, from the Report of the Commission for 1907, at page 18, the following:

"FINDING VALUE OF RIGHT-OF-WAY.

"One of the most difficult problems that the Commission had to solve was the method to be employed in ascertaining the value of right-of-way. The method finally adopted was as follows: men were employed to visit each county seat, to make

complete records of all transfers of real estate within two miles of a railway that had been recorded in each county within five years. No attention was paid to transfers for nominal sums. The Commission believes that by this means it has ascertained the true market value of farm property adjacent to railways in every county of the state. It is everywhere recognized, however, that the value of land for right-of-way is different from its value for agricultural purposes. In order, therefore, to ascertain the value of right-of-way, it still remained for the Commission to decide what is the ratio between the value of farm lands and the value of adjoining right-of-way lands. The Commission has decided on a basis upon which it will fix the value of the right-of-way, but it has not made public its decision. In arriving at its decision as to the ratio that should be established between the value of farm lands and the valuation of right-of-way, the Commission has been guided to a considerable extent by the prices that are being paid for lands for right-of-way lines that are now being constructed or have recently been built. The Chicago, Milwaukee & St. Paul, for example, is building a branch from Farmington to Mankato, and the Commission has made careful inquiry to ascertain what it has paid for real estate."

Q. Mr. Staples, that which I have just read has reference to the work of Mr. Morgan, which was then in course of performance, at the time of the making of the report of 1907?

A. It has reference to the work which was under his immediate direction,—supervision, I may say.

Q. And concerning which he has given testimony in the Northern Pacific and Minneapolis & St. Louis cases?

A. Yes, sir.

Q. In your direct examination your attention was called to a provision of the constitution of the state, a part of Article 10, Section 4, which is as follows, "All corporations being common carriers enjoying the right-of-way in pursuance of this

section—(the right-of-way franchise, I think, is the word).

Mr. O'BRIEN: I think the first part of the section refers to eminent domain.

Q. —"shall be bound to carry the mineral, agricultural and other productions or manufactures on equal and reasonable terms." Now, Mr. Staples, do you understand that this constitutional provision imposes upon the carriers referred to in it, any other or different duty than is upon the carriers with respect to things not named in the constitution?

A. No, sir, not so far as that constitutional provision is concerned.

Q. That is, as respects the particular commodities named or referred to in the constitution, there is no different or other duty, as far as the carriers are concerned, with respect to equal and reasonable rates, than there is with respect to everything else that they carry, is there?

A. I wouldn't so regard it.

Q. And the Commission has never regarded anything peculiar to those particular commodities?

A. Not for a minute, no, sir.

Q. Now, you have been a member of the Commission since 1900?

A. Yes, sir.

Q. And the Commission has existed since what date?

A. 1885 or 1887, I am not certain which.

Q. Since the year 1887, the Commission, under what is now Section 1969 of the statutes, has had power, on complaint of any person or corporation or municipal corporation, to fix rates, have they not? I will read the language of the section: "If, upon the hearing, such tariff of rates, fares or charges, or any part thereof, or of such classification, is found to be unequal or unreasonable, the Commission shall make an order stating wherein the same are so unequal or unreasonable, and shall make a tariff of rates, fares, charges and classification which

shall be substituted for the tariff so complained of."

A. Yes, sir, they have.

Q. And since 1887, it has had power, on its own motion, to investigate the subject of rates and all matters relating to the management of common carriers and to fix, of its own motion, reasonable rates, fares, charges or classifications, has it not?

A. Yes, sir.

Q. And since 1905 it has, by statute, had the power to fix and apportion joint rates between two or several common carriers in the state, has it not?

A. Yes, sir.

Q. And from time to time, therefore, since 1887, the Commission has, as a matter of fact, fixed rates either by formal official action or by calling attention to the matter in various ways and at various times, so that its will became known and followed, sometimes without an order and sometimes after a formal order?

A. Yes, sir, I think that is true.

Q. Now, it has also fixed, since 1905, joint through rates on two or more carriers in the state? It has fixed one, I remember.

A. Yes; the Commission has really done very little of that, although, in the way you spoke of before, in quite a few cases, joint rates have been inaugurated or put into effect by conference. I do not recall of more than one order. Still, there may be more than one.

Q. And the order that we all have in mind is probably the order respecting the rate on coal?

A. Yes.

Q. From Duluth to New Ulm via the St. Paul & Duluth Railway Company, before it became a part of the Northern Pacific, and the Minneapolis & St. Louis Company?

A. Yes,—that was the most conspicuous case.

Q. In that matter, did it undertake to fix the division be-

tween the carriers, or did it simply fix the through rate, leaving the subject of division to the carriers, if they could agree upon it, and if it turned out that they could not, or did not, the Commission then could take up the matter of division?

A. Well, I have read of the case, Mr. Butler.

Q. That was made before you were a member, was it?

A. Yes, but I think that the Commission was appealed to and finally did make the division.

Q. That is the only instance of making a joint rate by formal order or a division of a joint rate that there is?

A. I think, by formal order, that would be true. There have been others made, but not where a formal order was entered.

Q. Now, it has been true, since 1899, has it not, that the law contained this provision, "No change in classification shall be made and no change shall be made in rates, fares and charges which have been established and published as aforesaid by any common carrier in compliance with paragraph 2012, except upon ten days' public notice which shall plainly state the changes proposed to be made in the schedules then in force and the time when the changed schedules will go into effect, and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and kept for public inspection"?

A. Yes, sir, that has been the law since 1899.

Q. So that was the law during all of the time covered by Ex. 3C—Staples?

A. Yes, sir.

Q. This is the exhibit which relates to the special temporary tariffs, showing the company, the stations between which applicable, the commodity, the regular rate, the proposed special rate, date effective, date of expiration, date filed and the tariff number?

A. Yes, sir.

Q. And a failure of the railroad companies to comply with the provision as respects the change of rates which has been referred to in your testimony this morning was made a crime by statute, during all that time, was it not, Mr. Staples?

A. Well, there was a penalty, a heavy penalty; a general penalty would apply for failure to comply with that section.

Q. And there never was any prosecution under it, was there?

A. No, sir.

Q. At your request, or upon the recommendation of the Commission, (which it is, by law, I think, required to make for changes in the law,) the provision was somewhat modified and strengthened, was it not?

A. Yes, sir.

Q. Then, prior to 1905, as I gather it, the railroad companies could not, without your consent in writing, and upon the written order of the Commission, raise any rates for the transportation of grain, lumber, coal or livestock by change of rates or classification?

A. Where the rates had been in for sixty days, yes, sir.

Q. And no change whatever could be made except upon filing a tariff for ten days before it should take effect?

A. That is the provision of the law, yes, sir.

Q. And was, for a long time, prior to the change in 1905?

A. Yes, sir.

Q. Now, in 1905, the law was so amended and extended, on the recommendation of the Commission, that no change could be made at all without the consent of the Commission?

A. Yes, sir.

Q. And it was made the duty of the Commission to hold a hearing upon an application to change the rates at all, whether up or down?

A. Well, it was made the duty of the Commission to give

such hearing as in its judgment was necessary in a particular case.

Q. Now, this practice of special rates, referred to in your Ex. 3-C, continued without objection or prosecution, for a great many years, did it not?

A. It continued without prosecution, not without objection.

Q. The Commission never instituted any prosecution under the provision?

A. No, sir.

Q. Made no attempt to enforce it by any appropriate procedure for that purpose?

A. No, sir.

Q. And, in order to get rid of what was considered by the Commission an undesirable practice, it recommended to the legislature to pass a law (which it did pass in 1905) requiring the consent of the Commission to such change—the written consent?

A. Yes, sir. In that connection, Mr. Butler, this recommendation had been made at perhaps five or six sessions, one following another, before the legislation was secured.

Q. After repeated recommendations, then, if you wish, the legislature so amended the law?

A. Yes.

Q. Prior to 1905, there had been, had there not, some rate adjustments, (which were brought about by the Commission,) of quite extensive size, of lumber and grain, and the more important commodities?

A. By "extensive size" you mean—

Q. I don't mean an individual item in a schedule, or to an individual station, but I mean applicable to important commodities over a great part of the state.

A. Well, over large portions of the state, yes, sir.

Q. That is what I meant. Will you enumerate the more important, in your time, Mr. Staples, or, prior, if you wish?

A. Well, I recall one, in perhaps 1902.

Q. And what was that?

A. Covering rates on livestock, particularly in the southern half of the state; not over the entire territory, but a large portion of it.

Q. A reduction of rates?

A. Yes, sir.

Q. From the southern part of the state, on the southern roads, to the Twin Cities?

A. Yes, sir.

Q. And South St. Paul, and also to Duluth?

A. No, it was to South St. Paul. The object of that reduction, or sought-for reduction, was to level up the rates, putting South St. Paul, as nearly as possible, on an equal footing with Chicago.

Q. Why?

A. Because of a reduction which the roads had given to Chicago. And, I may say, prior to that reduction, the officials of the different roads had conferred with our Commission, and that reduction was brought about by some action before the Interstate Commerce Commission, and they were notified and recognized it to be perfectly evident and necessary, if reductions were made to the Chicago markets, that it would be necessary to equalize or meet those reductions in a measure coming to the South St. Paul markets, and it was by compromise that this reduction was secured.

Q. It was to maintain the proper and just relation between these primary markets, one at Chicago, an interstate haul, and one at South St. Paul, a state or local haul?

A. That was the purpose, yes, sir.

Q. And when you say equalize you don't mean give them the same rates?

A. Oh, no, not at all.

Q. You mean to maintain—

A. To try and maintain the relationship which had existed.

Q. —maintain a kind of parity of rates?

A. Placing those markets, as nearly as possible at equal advantage to the shipper, one to the other.

Q. And the interstate reductions made it necessary, in order to be fair to Minneapolis and St. Paul (to the South St. Paul market), to reduce the state rates?

A. Yes, sir, it seemed that way.

Q. That was in 1902?

A. That is my memory.

Q. Now, prior to that time, during the administration of Gov. Lind, was there a readjustment of rates from the southern part of Minnesota on grain to the Twin Cities and Duluth?

A. There was some readjustment in the rates, Mr. Butler, but I couldn't say at all what it was.

Q. Were you on the Commission then?

A. No, sir.

Q. Well, do you not know, as a matter of history of rates, that it was a reduction of rates on grain from points in southern Minnesota, served by the "southern roads" as they have been called in this case, to Minneapolis?

A. The attempt at that time was to bring about more uniform rates upon grain between the southern and the northern portions of the state, and some considerable reduction was had upon the different kinds of grain from the southern portion of the state, both to Minneapolis and to Duluth.

Q. That affected the Omaha Railway Company, the Northwestern Railway Company, the Minneapolis & St. Louis Railroad Company and the Chicago, Milwaukee & St. Paul Railway Company, did it not?

A. It would, all you name. How much it affected the M. & St. L., I wouldn't know,—that is getting somewhat north.

Q. Now, do you know whether or not that particular re-

duction of rates on grain, from points in southern Minnesota to Minneapolis and Duluth, was followed immediately by a reduction on grain from the same territory to Milwaukee and Chicago, so as to maintain the parity of the grain rates between the primary markets, as was done in 1902 in the stock case?

A. I do not know, Mr. Butler.

Q. Now, what other considerable rate-adjustment was brought about by the Commission that you remember?

A. Perhaps the greatest adjustment, or that covering the greatest portion of the state, was had, I think, in 1904 (1903 or 1904,) upon the different kinds of grain and coal, and some reduction upon lumber.

Q. Grain, coal and lumber all over the state?

A. Why, no, I wouldn't want to say all over the state, but it did cover different portions of all parts of the state.

Q. Was that by reason of the action of the Commission?

A. Why, the direct action was upon the motion of the Commission.

Q. You served notice that the Commission had up for consideration the matter of rates, and the railroads appeared and new schedules were made?

A. Yes. It originated, however, with some formal complaints—one, particularly, from Litchfield,—and after going into the case pretty thoroughly it was recognized by the Commission that an apparent injustice was being done, and that any change such as would follow if a reduction should be made, would necessarily affect so many points in the state that it would not be fair to consider the question at all without formally advising all the companies; and, in order to do that, and make it legal, the Commission, upon its own motion, adopted a resolution which challenged the rates upon coal, lumber and grain.

Q. Litchfield is on the line of the Great Northern?

A. Yes, sir.

Q. Is that its only line?

A. Yes, sir.

Q. And it is about how far from Minneapolis and St. Paul and the Transfer?

A. I think about 67 miles from St. Paul, or something like that.

Mr. O'Brien: 78 miles.

Witness: 78 miles from St. Paul.

Q. And this matter came up on complaint from Litchfield that the rates of grain out, and coal and lumber in, at Litchfield from the Twin Cities and Duluth, were too high?

A. Yes,—of course, coal would be from Duluth.

Q. The grain from Minneapolis, probably?

A. And I will say, in that connection, that the rate on coal from St. Paul and Minneapolis was particularly complained of, while we don't regard them as distributing centers.

Q. And the adjustment that we speak of was a reduction in rates only on grain, coal and lumber, but did it extend to other things?

A. Well, if anything, to livestock, but I don't recall that livestock was a factor.

Q. Now, did the adjustment which was made extend to other roads than the Great Northern?

A. Yes, sir.

Q. All of the roads in the state?

A. I believe all of the chief carrying lines were affected at more or less points.

Q. At any rate, the Great Northern and Northern Pacific and Soo?

A. Yes, sir, and Milwaukee.

Q. And Omaha?

A. Yes, sir, the Northwestern.

Q. The Minneapolis & St. Louis, would be affected, by its western branch, at least?

A. Yes, sir.

Q. The Rock Island wasn't then here?

A. I believe not.

Q. Was that a considerable reduction, Mr. Staples?

A. Well, at some points it was. That is,—yes, I regard it, did regard it as a very substantial reduction from some points; it was very small at many other points.

Q. On the northern roads, did it extend as far west as the Dakota line, or can you recall?

A. Why, I hardly think it did.

Q. Don't think it went as far as the boundary. On the southern roads did it extend as far west as the Dakota line?

A. Well, it extended to Pipestone.

Q. Well, that is pretty near?

A. Yes, sir, within three or four miles.

Q. And to all of the roads from Pipestone?

A. I believe it did, yes, sir.

Q. Now, these reductions were made necessary in order that justice might be done to Litchfield, and, at the same time, that, in doing justice to Litchfield, injustice should not result to other points in the state?

A. Oh, I wouldn't want to answer that in the affirmative. The reductions obtained were regarded by the Commission as the best which could be had by means of a compromise and were very much better rates than had obtained to the communities benefited.

Q. By better you mean lower?

A. I mean lower, yes, sir, and were in no sense an injustice to the carriers.

Q. Well, I didn't mean to take your opinion upon that point, but what I was trying to get at was this: that you found, if you lowered the rate at Litchfield, it would be necessary to lower in the other places that you did lower it in, in order to be fair as between communities and carriers?

A. Why, as I said at the outset, after going into the case before any testimony was taken but studying the case carefully, it was determined that any considerable reduction at Litchfield could not be had without disturbing the relation of rates and making it necessary that certain reductions should be had at certain other points in any event.

Q. Now, will you explain that a little more fully, by way of illustration, if you recall any illustrations, so that the Master may understand why the statement in your last answer is so?

A. Why, the Commission, as I explained two or three days ago, had been receiving complaints, many of them, against the rates which were being charged by the different carriers, but, as a rule, those complaints were based upon what was called discrimination, generally taking into consideration the question of distance. Now, the Commission never has, for a moment, and does not to-day, regard the question of distance as controlling. We recognize, in our practice and judgment, what is an absolute necessity when we permit the question of blanketing; we think that is necessary and is not to be considered as a discrimination in any sense. But, eliminating that for the moment and allowing for the necessary blanketing, it was recognized, as I say, that granting any considerable reduction at Litchfield would make it necessary, in order that our ideas of what were a reasonable relation of rates, to carry reductions at other points and upon other lines.

Q. Pipestone is three times as far away from Minneapolis as Litchfield, isn't it, about? measured by the Great Northern, which is the short line.

A. Yes, I think it is, just about.

Q. A reduction by the Great Northern from Pipestone in consequence of a reduction from Litchfield, would make necessary reductions on the Omaha and on the Milwaukee & St. Paul from Pipestone, would it not?

A. Yes; you reduce the rates from one point, particularly

in the southern part of the state, and you immediately find that the roads which are crossing and striking the intersecting points are obliged to reduce their rates; that is, if they want to do any of the business at that point.

Q. Let me see if I get an idea about how that Litchfield instance would work: Litchfield is on the Great Northern, and the Great Northern is the short line from Pipestone to Minneapolis as well as from Pipestone to Duluth?

A. Yes, sir.

Q. The Omaha serves Pipestone to Minneapolis and Duluth?

A. Yes, sir.

Q. The Milwaukee serves Pipestone to Minneapolis and Duluth?

A. Yes, sir.

Q. The Rock Island now serves Pipestone to Minneapolis?

A. Yes, sir.

Q. Now, starting with your Litchfield case, if you make such a change there as to make one necessary on the Great Northern at Pipestone, that knocks down, does it not, the rate on the Omaha to Minneapolis, on the Milwaukee to Minneapolis, and on the Rock Island to Minneapolis, from Pipestone, or puts them out of business at Pipestone on the commodities in question?

A. Yes, sir, it does.

Q. Now, the mileage of the Great Northern and of the Omaha are about alike from Pipestone, are they not, a few miles difference?

A. No, I think the Omaha is quite a little longer.

Q. So, then, in order for it to remain in the business at Pipestone, it would have to blanket for that quite a lot?

A. I have forgotten the difference in the mileage from Pipestone to Duluth, but it is something over a hundred miles, between the four or five different carriers.

Q. And the disturbance of the rate on the Great Northern

from Pipestone to Minneapolis and Duluth requires the Omaha to meet it or go out of business, doesn't it, at Pipestone?

A. Yes, sir.

Q. Now, the Omaha to Duluth is an interstate road, and, indeed, so is the Great Northern, isn't it?

A. Yes, sir.

Q. From Pipestone?

A. Yes, sir.

Q. Now, I had in mind, in my last question, when you corrected me about distances, a difference between the Omaha distance and the Great Northern distance to Minneapolis. That is comparatively slight, is it not, or do you recall?

A. No, I don't recall.

Q. Well, at any rate, it is great as respects the distance to Duluth?

A. There is considerable difference.

Q. So that it would be necessary for the Omaha, then, on this Duluth business, to blanket for about one hundred miles? Mr. Yapp has furnished the figures. The Minneapolis distance on the Great Northern is 202 miles, Omaha, 214 miles, the difference 12 miles. My question is, after the disturbance or reduction of the Great Northern rate from Pipestone to Minneapolis and to Duluth, the Omaha, in order to continue in the business, would have to blanket at least twelve miles on the Minneapolis rate, and eighty-six miles on the Duluth rate, or forego the business at Pipestone?

A. Well, of course, that would perhaps follow. I do not think it does, as a matter of fact. The Omaha, being an interstate road, the rates to Duluth may be blanketed because of other conditions, or they may not. They would be, to Minneapolis.

Q. Yes; as I understand, its rates with respect to the long-and-short-haul clause in the interstate act and in your act, are somewhat different?

A. No, except this: they do respect it in the case of our rates, and they do not respect it in the case of the interstate rates; that is about the condition.

Q. Well, the interstate rate people hold that competition makes a square exception to it and permits, in instances, a higher charge for the shorter haul included in the longer, under similar circumtsances, if conditions of competition justify it, and they hold that competition does, and in the state that is not the rule, as I understand it?

A. That is true largely; it is, however, left with the roads entirely as to whether they will blanket the rate or not.

Q. Yes. That is, the courts have held that, on the interstate rates, in the first instance, it is up to the railroads to say whether or not competition justifies the exception?

A. Yes, that is right.

Q. And so they go on and make the exception and adhere to the rates under the exception until they are prohibited from doing so by the Interstate Commerce Commission taking a different view of the case; that is the practice, isn't it?

A. Yes; that very seldom obtains, however.

Q. That is, they generally seem to approve of the railroad companies blanketing, making the exception rare?

A. No, they recognize their inability to secure any change in it.

Q. At any rate, no matter what they think about it, they don't do anything about it; that is your idea, is it?

A. Well, they investigate those cases, at times, Mr. Butler, but we have had charge of cases which have been investigated under our supervision (interstate cases) and the Interstate Commerce Commission practically tell you that, in all likelihood, they will be unable to obtain any relief for you.

Q. Continuing further with this Litchfield incident, the change of rates to which you have referred would also reduce the Milwaukee rate to Minneapolis and Duluth, and it would

have to blanket to Minneapolis sixty-two miles and to Duluth 126 miles, wouldn't it?

A. I think that is right if that mileage is right. I said there was more than a hundred miles difference.

Q. And that situation would also apply as respects the Rock Island road, which is now at Pipestone?

A. Yes.

Q. So this Litchfield incident furnishes a good illustration of the two rules which you say you recognize: first, that distance is not controlling, and, second, that the practice of blanketing is necessary and right, does it not?

A. Why, we so regard it, yes, sir.

Q. And the single instance, that arose in the Litchfield case, illustrates the application, and the necessity for the application, of both those principles in rate-making, thoroughly, does it not?

A. I think so, yes, sir.

Q. Both as respects the strictly intrastate haul and as respects the interstate haul?

A. Yes, sir.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. Mr. Staples, I got the impression, from your direct examination that notwithstanding there were numerous complaints as respects rates and service, and the like, about 95 per cent of all those complaints were adjusted amicably. That is, I suppose you mean by that, without it ever becoming necessary for the Commission to adjudicate upon the question and make an order. I am now speaking of this law of 1905.

A. Yes, I think that statement represents about the facts, Mr. Butler.

Q. I don't care to bind you exactly to the percentage.

A. To a very large extent that is true.

Q. Now, I was asking you, this morning, for the general

adjustments or reductions, over considerable territory, as respects important commodities, and we had already, at the time of adjournment, spoken of the grain adjustment in about 1900, I think, during Gov. Lind's administration—

A. Yes, I think it was in 1900.

Q. —and the grain, coal and lumber adjustments of 1903 or 1904. Now, was there any other, of considerable extent, Mr. Staples?

A. No, sir.

Q. The Commission itself never made a schedule of rates, as respects any commodity, until 1903 or 1904, at the time of the Litchfield complaint,—Did that amount to an order there, or was it simply an adjustment?

A. That was not an order.

Q. So then, really the first schedule of rates—

A. It was a schedule, Mr. Butler, which was under discussion. That is, it resolved itself to the effect that a schedule was formulated, but not at all upon the basis of this schedule now in controversy, not at all upon that basis.

Q. Was there a complete schedule, written and submitted to the railway companies, and put in, at that time, as respects the commodities grain and coal and lumber, in 1903?

A. No, I could hardly say there was; but the questions being considered were the character of reductions along different lines, or, perhaps better said, to certain points, and that the reductions would approximate a certain percentage up to that point, or, intervening, between that point and the terminal, and they graduated, but I don't want to convey the idea that a real schedule was made by the Commission; one was finally made by the companies and submitted to the Commission upon the plans agreed to, but didn't work out; I think two or three were submitted before the Commission finally accepted it.

Q. So, then, the first schedule that was really made by the

Commission in this state was that in controversy here, as regards the class rates?

A. Yes, sir, I think I ought to say "yes" to that. That was the first real schedule of rates, in the sense that a real rate schedule means.

Q. And the Commission never did exercise its authority to fix passenger fares?

A. Yes.

Q. Did it?

A. Yes.

Q. Have you looked that up to see if that is true?

A. Yes, the Commission at one time issued an order.

Q. Making three cents the maximum?

A. Making three cents the maximum.

Q. That was many years ago, was it?

A. Yes, but within my time; and there must have been exceptions made at that time allowing certain roads to charge more, because, within my time, an order has been issued making three cents the maximum upon roads which were charging more than that three-cent maximum. I remember it applied particularly to the range roads and they observed the order.

Q. But then, it is fair to say that, for many years, speaking generally, throughout the state, three cents per mile was the maximum observed by railroads as far as passenger fares are concerned?

A. Yes, sir, except some of the very small roads up in the woods.

Q. The Commission did not enter upon that work at all?

A. No, sir, not in a general sense.

Q. I mean about the same time that it took up the freight matters.

A. No, sir, it did not give it any consideration or any attention.

Q. And never, itself, made any determination as to the rea-

nonableness of a two-cent maximum law?

A. No, it did not, but perhaps either two or four years before this legislative act, the Commission did go into the passenger rate question quite extensively and made a full report, in which the conclusion was that at that time there would not be a warrant for a reduction from the three-cent maximum rate, and that report is published.

Q. Do you remember what year it was?

A. Well, I should say that it was two years before 1907.

Q. That would be 1904 or 1905?

A. 1904 or 1905. I will ask Mr. Yapp to hunt up that report.

Mr. YAPP: I think it was in the year 1903.

WITNESS: I am sure it can be found.

Mr. YAPP: I will give it to you exactly.

Q. I suppose that there is a relation between freight and passenger rates, is there not, Mr. Staples?

A. Why, in this sense, that a great many feel that the passenger business should be self-sustaining, at least, or stand upon its own basis of earnings and expenses, yes. I don't mean to say that is is customary for the roads in reporting to divide the expenses between—

Q. No, but what I was trying to get at, in a proper adjustment of rates, it is true, is it not, that the freight ought to bear its share of the burden of operating expenses, a return upon the property, and that the passenger business ought to bear its own share; that neither ought to bear any part of the share of the other?

A. Why, I think that would, perhaps, be a fair way to look at it. I don't believe that that is absolutely essential, nor do I believe that it is the case in a great many instances that such is a fact.

Q. Now, when you came to enter upon the reduction of freight rates as respects the commodities mentioned in your

order of December, 1906, and the class rates in the order of September, 1906, did you determine whether or not the readjustment left the relation between passenger business and freight business right, leaving to each its proper share of the burden, or was that taken into account at all?

A. Well not exactly as you put it, Mr. Butler. I can, however, answer one thing, that the Commission had no intention, at that time, of undertaking to make a reduction in the passenger rates.

Q. Well, then, if the relation was right before the reduction in the freight rates by means of these two schedules, would it be wrong afterwards?

A. I wouldn't want to undertake to say what would be right.

Q. It is a matter of extreme difficulty, is it not?

A. Yes, and more than that, I don't know how you would measure it. I might call right, with all the facts before me, what another man would not deem to be right.

Q. Well, not speaking of the relation of freight rates to passenger rates, if they were right before the reductions that you made, would it not appeal to you as reasonable to say that they were not right afterwards, or would you be willing to say the relation was right both times, or do you want to say anything about it?

A. Well, I haven't any objection to saying, when you consider the people who are interested in the matter, that it might not work a great injustice to anybody to make the change, and it might work a great benefit to a large element of the community to make the change that was made, and leave the passenger rate stand where it was.

The MASTER: Even though the relation might not be right?

WITNESS: Even though the relation was changed or might not be what was considered right. Perhaps is wasn't right before.

Q. So, then, there must be taken into account, in a sense,

the number of people affected and the sentiment upon such a question, must there not?

A. Well, the sentiment is a factor, but the number of people affected would be very important.

Q. More important than to get arithmetically the right relation between the passenger business and the freight business?

A. I think so.

Q. Not, of course, intending by that answer to lead you to any extreme or absurd distortion of the relation.

A. I understand, yes, sir.

Q. Now, referring to Ex. 3-C—Staples, I think you told us that there were, at the time of the passage of the law of 1905, 1,040 tariffs on file with you?

A. I made that statement based on information furnished me by our rate-clerk. I asked him to give me the number.

Q. Were not some of them obsolete, out of effect?

A. No, sir.

Q. All in effect, were they?

A. Yes, sir.

Q. How many are on file now, that are in effect?

A. Well, I do not know.

Q. More or less, or would you be able even to tell that?

A. My judgment is that there are less, but I do not know.

Q. But how many less you couldn't tell, if there are less in fact?

A. No, sir.

Q. You told us that since the passage of the law of 1905 there have been 950 applications made to you for permission to put in these special temporary rates such as are referred to on this exhibit?

A. No, you misunderstood that, Mr. Butler. I did testify that there were 940 or 950 applications—had been that many applications made to the Commission for permission to change the rates or to change the classification or the rule, which would

really change the rate; but not in the nature of temporary, all of them, by any means, though there have been many applications for changes which were temporary.

Q. To serve the same purpose as these tariffs referred to on your Ex. 3-C?

A. Yes, sir.

Q. Could you approximate that within a hundred or two?

A. Do you mean the number of that class?

Q. Yes, since 1905.

A. I shall have to guess at that, but I would think that 25 would cover it.

Q. I got the impression from something you said in answer to Mr. O'Brien's questions in direct examination, that you were of the opinion that, sometimes, at least, circumstances justified the application of such special and temporary tariffs.

A. Yes, sir, I said so.

Q. That is the fact, is it not?

A. Yes, sir.

Q. And the enumeration of these that you have specified on Ex. 3-C—Staples is not intended by you as a specification of unwarranted or unjustified temporary tariffs; it was simply as to the manner of making the application of it, was it not?

A. No, both. I think some of those are entirely unwarranted, Mr. Butler, and others of them are perfectly right.

Q. That is the impression I got, but you did not intend to give the impression to the Master that all that were so applied were?

A. Not at all, no, sir.

Q. Many of them may have, and probably did, result in benefit to the public and to carriers?

A. No doubt that that was the case.

Q. And do you sometimes still grant the permission for such things, to relieve people from peculiar situations, like this long-transit example that you specified, or are they uniform-

ly refused by the Commission?

A. Oh, no; no, indeed. I will give you an illustration. There is one, that was referred to, calls for a reduction in the rate on pickles shipped from some point, (I think on the Northern Pacific) perhaps Clear Lake or some point north, to the Twin Cities; that, as I recall now, covered a period of say thirty days, I am not sure just how long it did cover. Now, if the company came to us with that sort of an application now, with the circumstances as they were in the case of that tariff, we would say to them there is no special reason for that reduction and if you want to file such a tariff and make it the permanent tariff, we haven't any objection. And very frequently they modify their application and do make it a permanent tariff.

Q. Could you conveniently illustrate a case where such special and temporary low rates are justified?

A. Yes. They are usually given for the purposes of moving, well, perhaps, a factory, or for the transporting of material for the erection of a new factory. Take, for instance, I think it was last Saturday, the Northern Pacific made application for a specially low rate upon cement, I think between Duluth and the Twin Cities and International Falls, and that cement is to be used in the construction of the large power-plant which is being erected there. When constructed it will have a large output, manufacturing paper and pulp, and also give to the Company a large business in the way of moving pulp-wood in to the mills, and perhaps it covers other commodities which enter into the construction of this plant, I have forgotten about that; but we give that rate, to continue for a certain time. Now, that rate applies, during that meantime, to anybody who may ship to that same point.

Q. Yes, and so did these tariffs—

A. Yes.

Q. —in Ex. 3-C?

A. Yes, that is true.

Q. Was this particular instance that you cite, where you approved of it on cement to International Falls from Twin Cities and Duluth, a considerable reduction from tariff, was it a big cut in the rate?

A Oh, it is considerably lower than the rate, I have forgotten just how much lower; and I ought to say, in connection with that, that one of the purposes of the company making the application was to meet the Canadian line's rate, which they were willing to do upon this same commodity.

Q. To meet interstate competition or international competition?

A. Well, it was, in that case, yes.

Q. International competition.

A. Then I remember out at Brainerd, (I think it was Brainerd) or some town near there; where a large factory was going in, they had a large amount of iron entering into the construction, and for the material going into that factory we authorized a particularly low rate.

Q. Now, the considerations for that were these: in the first place, it was to help build up that particular factory or industry; that is one motive, which would be from the standpoint of the public; another one, from the standpoint of the carrier, is that, when built up, it will furnish traffic, both directly and indirectly; isn't that true?

A. Yes, sir, those are factors taken into consideration by the Commission.

Q. And those are the factors, in this Brainerd case, that made the Commission feel that such a temporary departure from the tariff of rates was justified?

A. Yes, sir.

Q. And these factors, in addition to the Canadian competition, justified the cut-rate to International Falls on cement from the Twin Cities and Duluth?

A. Yes, sir. In addition for the moving of sand to some place where they have no sand, where the sand is going into some public improvement, we sometimes authorize a specially low rate, for a limited time.

Q. Now, this International Falls instance and the Brainerd instance, or the towns you referred to, were temporary tariffs; about how long would they endure?

A. Well, I think the one at Brainerd or the point near Brainerd, wherever the place was, was a short period, perhaps two or three months; and the one at International Falls I think will extend for something like a year. I am not certain about that, but the idea was that, during this construction (and it is expected that that will last or continue all through this summer), they may have the benefit of those rates. And we indicate the length of time, and sometimes, upon an application with a reasonable showing, indicate that the time will be extended, so that the company constructing may know upon what rates they can depend.

Q. So, then, Mr. Staples, it is fair to say that if such temporary or special rates be publicly and openly made, and with approval of public authority, they usually (in such cases, at least, as you have mentioned) are justified and result to the welfare of the public and of the carrier?

A. Yes,—I say yes, but I don't want to lose sight of the fact that there isn't any doubt at all that some of those rates have been put in—

Q. Which are not justified?

A. —which are not justified, in any sense of the word, and the carriers would admit that fact.

Q. Now, it would not be right, would it, Mr. Staples, to seize upon such instances so justified and call them unjust discriminations or inequalities or "midnight" tariffs, or to apply to them any of the popular epithets that have frequently been applied to some low rates?

A. No, sir, it would not, and I feel that I have not conveyed that impression.

Q. No, you have not. Now, Mr. Staples, neither would it be at all justified or right for public authority to seize upon the rates specified in these temporary tariffs as just rates under other circumstances and build a tariff on the basis of such rates made for temporary and special conditions?

A. No, sir, it would not. Then, I ought to amplify a little and say that, in a good many cases, that sort of a tariff was put in, prior to the law of 1905, without limitation; the company could just simply cancel the tariff at any time, the Commission wouldn't know of it.

Q. I understand the danger of abuse there—and the abuse, if there was any, was from the fact that that matter did not require approval of public authority, in your judgment?

A. That is my judgment, yes, sir. Perhaps, while we are on this subject, I ought to cite one case that is before the Commission now,—two; one has been disposed of, after three or four weeks of investigation, and that was a specially low rate upon threshed flax straw. Parties at St. Paul are, or have been, considering the construction of a plant for the manufacture of tow and other products which come from threshed flax straw, and it began with the Omaha company, an application was made for a specially low rate upon threshed flax straw. Now, to make it short, one or two other companies has made the same application. The Commission has given the matter thorough investigation, has modified the plan proposed by the companies and has authorized a rate, which, as I remember now, is about 75 per cent of the hay rate to the same points. The Commission having authorized that rate after its own investigation, takes the position that when anybody comes in and complains of the hay or straw rate, making comparison with the threshed flax straw rate, it don't influence the Commission at all for we have gone all over it and know what prompted

that rate and are satisfied with it. That has been disposed of as indicated. Now, then, another case which is before the Commission now is for a permanent rate of five cents on wheat from Minneapolis to Duluth. That application is made by the Northern Pacific Company, and the basis of the rates under Chapter 232, as I recall it, would give a rate of I think 8.2 cents or 8.7, I have forgotten which, Minneapolis to Duluth. Naturally we inquire of the Northern Pacific the motive which prompts the application, and they indicate to us that it is because they are losing business, that the Great Northern and the Omaha lines are maintaining a five-cent rate on wheat—

Q. They are interstate lines?

A. They are both interstate lines—that they are maintaining a five-cent rate on wheat from Minneapolis to Duluth, and that they put that rate in making it apply to wheat which originates beyond Minneapolis. Well, in the minds of the Commission, that is not a reason at all. All wheat originates beyond Minneapolis, necessarily; Minneapolis is not a primary market. What prompts those two lines to maintain a five-cent rate—

Q. That is, it is not a farmers' market?

A. That is what I mean.

Q. You have been using that "primary market" in quite another sense.

A. I mean that it is not a market where the farmers market their wheat. Now, the Commission feel that the rate between Minneapolis and Duluth ought to be higher than five cents, and we are sorry to see the Northern Pacific find it necessary to apply for that rate, but we have asked a statement from the Northern Pacific Company which shall show the amount of grain which they bring in to Minneapolis and afterwards move to Duluth, and other data, before we dispose of the question. I think I can anticipate the ruling of the Commission to be, if we find that there is no escape from it, that it will not be our

purpose to keep them out of their share of that business. The chief difficulty comes in the fact that the rule of the Commission is that the through rate shall be the maximum for any intermediate rate, and that would work a hardship upon the Northern Pacific Company. Just how we will dispose of that feature I can't say.

Q. Now, let us hark back, for a moment, to the threshed flax straw rate; is that a permanent matter?

A. Yes, sir.

Q. Now, of course, the consideration which prompted the Commission to approve of a rate, so much lower on straw than hay, was to create the traffic, make it possible to make the flax straw worth something to the people who had it, and stimulate the manufacture of it into tow and stuffing for furniture cushions and such uses as it may be put to?

A. The idea of the Commission is that there is a product which can be utilized in two or three ways; to the farmer it is worth practically nothing; if he can get a little more than his labor out of it, we furnish a means for disposition, we furnish a market for it; and, to the Company, while the rate may not be particularly remunerative in itself, it does create traffic.

Q. Both directly and indirectly?

A. Directly and indirectly; and as a result of the mowing or shipping of that straw, a large output of the product will follow.

Q. In other words, what you are trying to get at, is what that traffic will bear, isn't that it, or a rate that will move the business? If the rate be too high, flax straw is worth nothing and cannot be shipped; so the problem is to make a rate that will move the traffic; in other words, make the rate what the traffic will bear, assuming it not to be destructive of all income to the railroad?

A. Yes,—if you were to put that just a little differently: The Commission really is not originating or making that rate—

Q. Permitting it?

A. —and would not impose it upon the companies.

Q. No, but you permit it?

A. Yes, sir.

Q. And the problem for the Company, and what you think, under the circumstances, to be justified, is to find a rate that will move the traffic, and in this particular case it is justified to be just as high as that traffic will bear, is it not?

A. Yes, and I will say that we made the rate quite a little higher than the proposition of the companies.

Q. Now, that recognizes a rule or principle or course of conduct, that has been followed by carriers always, does it not? I don't mean to say that every time they applied it it was justly applied, but the rule has been recognized always by carriers?

A. I think, with your qualification, Mr. Butler, that that is true.

Q. Now, Mr. Staples, whether or not, in given circumstances, such specially low rates (commodity rates, sometimes so-called) are justified, is a matter of extreme difficulty, depending upon a large variety of circumstances, and calls into activity the best powers of judgment of the rate-making authority, be it railroad authority or governmental authority?

A. Yes, that is true, but it ought to be said, in connection with that, that a great many instances might be cited where the people, the public, the parties to be served by the rate, whatever the rate may be, or upon whatever traffic it may be, are powerless, they cannot help themselves; and it certainly can be said that, in a large community or in the case of a large shipper, they do exercise, and have, for years, exercised a certain influence over the rate-making powers, speaking now of those which govern with the companies themselves, to induce them to put in certain rates, and they yield because of this pressure, and that results often in an unfair relation of rates.

Q. Yes, inequalities?

A. Inequalities, unreasonable inequalities, or a relation of rates which cannot be justified.

Q. Inequalities that appear pretty glaring when tabulated on paper?

A. Well, yes, and as a matter of fact.

Q. And it would not be fair to take this low rate which you have authorized on flax straw and then determine that the cost of hauling it was the same as hauling straw or hay, and fix the same rate upon straw and hay as this low rate, would it? it would not be intelligent rate-making?

A. No, I think in a broad way you must consider cost to the companies of doing the business, and that cost should be distributed among the various articles or the various classes of traffic.

Q. That will stand it the best?

A. That will stand it; it must be distributed relatively. When I say relatively, I mean the value both to the company and to the parties being served rather than the measure of cost in any particular instance—

Q. Yes.

A. —or upon any particular traffic or class of traffic.

Q. Yes. Now, it goes almost without saying, does it not, that the cost of hauling hay and this threshed flax straw, would be about the same,—the cost to the company, the operating charges? no one could figure the difference, could they?

A. If the minimum is the same it would be about the same.

Q. Both are in bales, I take it?

A. Yes, both are baled. I think the minimum on threshed flax straw is a little less than on hay or straw.

Q. Would a good way to express the solution of the problem be about like this: if the carrier with the business is better off than he would be without it, then the rate is justified, assuming the traffic would not otherwise move?

A. Yes, and assuming, also, that it would not prove unfair to other traffic of—I was going to say a like character—other traffic.

Q. Of competing character?

A. Yes.

Q. That, I intended to include in my question. So it often arises, does it not, with respect to certain and various commodities, that the problem for the rate-making authority, whether railroad or governmental, to solve is this: Will the rate in the specific instance leave the railroad company with more net than if it didn't have the traffic; and if it can be answered that it will, and the traffic would not otherwise move and no injustice will result from its moving, then the rate ought to be permitted? Do I make myself clear?

A. Yes, you make yourself clear, and I can answer that yes to you, but I would have a very hard time to make the ordinary individual understand that, and if the time ever comes when the public has confidence in the governmental authorities, the confidence which it should have, there isn't any doubt that between the authorities of the state or the nation and the railway companies a very great improvement can be made in the rate situation.

Q. So that it is very desirable, is it not, to have a flexibility of rates and the right to put in special commodity rates, either temporary or permanent, like the cement case that you have cited for a temporary one, or the flax-straw case for a permanent one, the public welfare requires it and the railroad welfare requires it, does it not?

A. Why, yes, under proper control and supervision, but I would not want to convey the idea that they cover any very large amount of the traffic which is actually moved by railway companies, for they do not.

Q. Well, that would depend, again, upon the commodities and situations, would it not?

A. Yes.

Q. By the way, did you find time to verify the order of May 3rd set forth in the bill of complaint as the formal one passed by the Commission?

A. I depended on your pointing that out to me in the bill; you indicated you would do so.

Witness is shown bill of complaint.

A. That is the same, Mr. Butler.

Q. Now, taking up the application of the Northern Pacific to put in a five-cent rate between Duluth and the Twin Cities; that hasn't been passed on by your Commission as yet?

A. No, sir.

Q. And the truth is that the Omaha, an interstate road, and the Great Northern, another interstate road, do apply that rate?

A. Yes, sir.

Q. And it is also true, as you believe, is it not, that in consequence of their applying it, the Northern Pacific is losing business?

A. Well, we are endeavoring to learn that, Mr. Butler.

Q. And these rates, of course, are to Superior and Duluth, the same?

A. Yes.

Q. The Northern Pacific Company meets the rate to Superior (the five-cent rate) because it is interstate to Superior from the Twin Cities?

A. Yes, sir, but wheat is seldom shipped to Superior.

Q. Duluth is the point?

A. Yes, sir.

Q. That is on account, I take it, of the inspection and weighing system?

A. Yes, sir.

Q. That is recognized in the markets of the world, I believe?

A. That is right,—other grain markets.

Q. That is the Minnesota inspection under your department?

A. Yes, sir.

Q. Now, it would not be right, would it, to maintain a different rate on the Northern Pacific between the Twin Cities and Duluth from the rate between the Twin Cities and Superior?

A. Why, those two points have always been recognized as one market. The question inquired into regarding the relation of the rates at Superior and Duluth, I take it, is entirely foreign to the question of what the rate shall be. Now, as I said, those two points have always been one market until this quarrel which has sprung up within a year or so.

Q. About inspection, you mean?

A. About inspection, yes, sir; but the rate to Duluth is practically the rate to Superior. If you ship to Duluth, there is merely the switching charges; they are one point.

Q. Of necessity they must be the same; don't you think so? The rates both in and out, Duluth and Superior, must be the same?

A. Why, yes, I don't see how one could view it any other way. There is one switching charge between them, anyway. That would be perhaps $2.50 that would be added to a car of grain shipped to either point.

Q. Large quantities of merchandise from the East are distributed to Minnesota from the docks at Duluth and from the docks at Superior?

A. I couldn't say as to Superior. I would doubt it, but there may be.

Q. Has it never come to your attention that at Duluth some of the railroad companies maintain large warehouses on their docks, where, during the lake season, great quantities of merchandise, sugar and hardware and nails, slow-moving merchandise—

A. Yes, I have been in the warehouses.

Q. —are stored and moved out at various times?

A. Yes, sir; but as to Superior I do not know.

Q. You don't know of the Omaha dock for that purpose over there in Alouez Bay?

A. No, I do not.

Q. Well, it also has a dock at Duluth, I take it, used for that purpose, of storing and distributing, has it not?

A. I think it has.

Q. Do you remember the fire there, a year or so ago, or two or three or four or five years ago, that destroyed it?

A. Yes.

Q. I think it was rebuilt. Now, assuming that to be the fact, that these are common lake ports, at which in warehouses are stored, during the water-transportation season, great quantities of merchandise, which are distributed into Minnesota by the Great Northern, Northern Pacific and Omaha railway companies, it follows, of necessity, does it not, Mr. Staples, that the rate must be the same from either the port of Superior or Duluth to Minnesota points, without regard to character, whether it be the Great Northern, Northern Pacific or the Omaha?

A. I think, Mr. Butler, that if the rate was different at either of those two points, the one having the higher rate would be entirely out of business.

Q. That is to say, if either the State of Minnesota or the State of Wisconsin enforced a lower schedule of rates at one or the other point, it would be a discrimination or operate as an advantage to the port taking the lower rate and build up its business to the damage and destruction of the other?

A. Well, of course, if I understand your question, there could be no influence upon the rates in Minnesota, whatever Wisconsin authorities might—

Q. No, but I mean to distribute to Wisconsin.

A. Yes.

Q. That is to say, Wisconsin, by forcing a low rate out of Superior on wholly local roads, would monopolize the trade of Wisconsin to Superior; and Minnesota, acting in a similar manner as respects Duluth and the trade in Minnesota, would monopolize the Minnesota market to Duluth?

A. Why, I think I have answered that, but I will undertake it in a different way: The Minnesota authorities, or the companies themselves, in installing a rate, would no doubt put a rate in from Duluth to points in Minnesota which they thought was fair, equitable, reasonable and just. Now, if that rate was such, there is no doubt in my mind that it would be unfair, inequitable and unjust if it were higher than the other point.

Q. Yes, that is it, exactly. Now, it would be wrong, too, would it not, to take the basis of rates existing between Superior and Duluth, at the upper end, and the Twin Cities at the southern end, as a criterion to build up a distance tariff throughout the state generally?

A. Yes, sir, I don't think that that should be the measure.

Q. Now, it so happens that, in the commodity rates, as I caught your direct testimony, it is the measure, as far as coal, hard and soft, is concerned (there being very little difference between the terminal tariffs between Duluth and Superior, at the Head of the Lake end and the Twin Cities at this end) and the distance or terminal tariff, that you have applied, extending out to the small points in the state.

A. I think, Mr. Butler, in the case of coal, that that is a good deal true.

Q. Now, was that a mere coincidence, or did the Commission conclude, as respects coal, that the rate from the Head of the Lakes to the Twin Cities was the right measure to apply from the Head of the Lakes into the small points of the state and from the Twin Cities to the small points in the state?

A. Why, it was partly coincidence, but I think a good deal was due to the existence of that rate; but I want to say, and

repeat what I have said (perhaps) in my direct testimony, that coal was one of the items which, in this distribution of the total cost of service among the different items or commodities moved, the Commission felt should bear as low, if not a lower share, than any of the others.

Q. So, then, as a matter of fact, in building up this coal rate from the Head of the Lakes and over the state which you have applied to 8,000 miles of the state, you took the interstate rate and also the state rate from the Head of the Lakes to the Twin Cities as your basis?

A. No, I didn't say that.

Q. Well, it came out,—that is practically the figure, isn't it, Mr. Staples? and then you make the same—

A. No, there is a slight increase in the soft coal.

Q. And a slight decrease in the hard coal?

A. Yes.

Q. Five cents decrease in the hard coal and two cents increase in the soft coal?

A. Yes, sir.

Q. So, having that slight difference in mind, then the same rate was made for like distances from the Twin Cities to the various points in the state?

A. Necessarily, as a maximum.

Q. And then the great distance on to four hundred miles was built up, as has been described heretofore, by addition of so much per mile?

A. Yes, sir.

Q. Now, conditions make the rate from the Head of the Lakes to the Twin Cities a low rate, one resulting from competition between carriers, different coal ports and the like, do they not?

A. I think there is no getting away from it that that is a factor.

Q. Much of this coal that comes from the Head of the Lakes

to the Twin Cities comes from the docks at Superior; my recollection is that there are great docks there?

A. Why, in that statement I had showing the traffic between the Head of the Lakes and the cities I was thinking at first it was separated, I don't know as it is, but we recognize that there is a considerable amount of the coal does come from Superior.

Q. Now, as a factor upon that condition of affairs in the situation on a road like the Wisconsin Central, which had not until recently, any road to Duluth but did have one to Ashland and to Manitowoc, where were received the same kinds of coal by lake as were received at Duluth, and that coal, too, had to come into the Twin Cities in competition with the coal from the Head of the Lakes; am I right about that?

A. I think it would; I think it would have to.

Q. And on substantially the same rate, or, at any rate, upon a parity of rates? Isn't it the same, by the way?

A. I think they are identical.

Q. And are they not also identical from Gladstone, where the Soo has a port and hauls its coal into the Twin Cities?

A. I think they are.

Q. And the Milwaukee from Manitowoc, also, or Green Bay?

A. Why, I think not, Mr. Butler. I do not think the Milwaukee delivers any coal in St. Paul or Minneapolis.

Q. Well, it has ports at Manitowoc and Green Bay and moves the same coal into southern Minnesota territory by continuous line-haul, does it not?

A. Well, I can't answer that.

Q. Do you know about the Northwestern to Manitowoc?

A. I wouldn't like to answer definitely to any of those southern points; I do not know definitely at this time.

Q. But, at any rate, the northern Lake Superior points all take precisely the same rate on the same kinds of coal to the Twin Cities as do the Head of the Lake points to the Twin Cities?

A. I think they do, yes, sir; I never knew of any difference or distinction in the rate.

Q. And those rates were built up by competition between the carriers, interstate and state?

A. Why, I don't think I ought to attempt to answer what the basis of those rates was. They have been in existence as long as I know anything about the subject; and what induced them, or—

Q. How they came about—

A. —how they came about, I really haven't any definite knowledge.

Q. Well, let us take this example, by way of hypothesis: Suppose that the local rate on the Northern Pacific road from the Head of the Lakes, or Duluth, if you please, to the Minnesota Transfer, on coal, were to be substantially reduced, would that not necessarily have the effect of a reduction from Superior to Minneapolis, from Ashland to Minneapolis, from Gladstone to Minneapolis and from Manitowoc to Minneapolis; or, in lieu thereof, eliminate the carriers from those interstate points from the business?

A. Of course, the Northern Pacific handles coal from Duluth, and, I suppose, from Superior, and I think from Ashland; naturally that road could not well cut out any one of the ports because of the fact that it had been obliged to put in a rate, perhaps a particularly low rate, from Duluth. Now, I don't think it should be argued at all that if a rate was put in from Duluth, whatever that rate might be, it would be observed by the carriers from those other northern ports named by you.

Q. Well, let me make it perfectly plain. Suppose the Commission of Minnesota were to put in a rate on the Northern Pacific on hard coal from Duluth to Minneapolis of 50 cents a ton, and suppose that the carriers from the Wisconsin and Michigan and Lake Superior ports made no change in their rates, can you form an opinion as to what the effect would be

upon the volume of interstate business from the interstate points to Minneapolis?

A. Yes.

Q. What?

A. I don't think there would be any.

Q. And that is true if there was any substantial difference attempted to be maintained between the Duluth and Minneapolis rate and the interstate rates referred to?

A. I think my answers have all indicated it to be my idea that if any one road should make a rate upon coal—and when I say coal, I speak of that because that is important, and the volume—

Q. And it is merely an illustration, isn't it?

A. Well, no, they might make a rate upon some other commodity which the other lines would not observe, but coal is an article of very large volume, the traffic is very great; and, first, I shall assume that any rate which might be put in would be one which should be observed, finally, after it had been put into effect by one company; I don't think there is any reason for doubt that the same reason which prompted that company to put in the rate would prompt the other companies to also adopt it.

Q. They would have to or lose their business, wouldn't they?

A. That would be my idéa, yes, sir.

Q. Grain and the products of grain from Minneapolis to Duluth would probably be in as complete analogy as coal from Duluth to Minneapolis as respects the same question of the interdependence of rates?

A. Well, I wouldn't like to say that as to grain. I can't offer any reason why there should be any distinction in the rates, but—

Q. There is no reason that you can think of why they should be different, is there?

A. The Omaha line and the Great Northern line, if I am

right about it, have been charging but five cents a hundred on wheat, right along. So far as I know, that has been their rate; it has been for some time; and it has been a long time since the Northern Pacific Company has brought this subject up with the Commission, and I am going to assume that there are two rates, and have been, for a long time, upon wheat between Minneapolis and Duluth.

Q. You don't know how wide they are apart?

A. Yes; five cents and seven and one-half.

Q. Now, suppose the Soo Road made a low rate on flour to Gladstone and disturbed the parity between Gladstone and Minneapolis and Duluth and Minneapolis, it necessarily follows that the flour will move easterly *via* Gladstone, does it not, and isn't that historically one of the factors that made the low rate on flour from the Twin Cities to the Head of the Lakes; isn't that what the Soo was built for?

A. Well, you say the low rate. Comparatively speaking, we don't think the flour rate is low, we think it is high. I didn't mean to evade the purpose of your question, however.

Q. Well, make it as low as it is, then.

A. I do think the Soo Road has been largely instrumental in influencing the rates, not to Gladstone particularly, but the rates upon that product which is destined to the eastern ports.

Q. Yes, they are in position to make all the rates to the lake ports?

A. Well, not exactly; you take wheat, and, from the best information I can get, the wheat which moved from Duluth to Buffalo, during this past season, did not pay to exceed perhaps a cent and a quarter a bushel, and it wouldn't appear to me that the Soo had anything to do with that.

Q. Now, going back, for a moment, to the Litchfield example that you suggested to us this morning: reduction of the rates referred to in your testimony, which was on coal and lumber and grain from Litchfield to Minneapolis, necessarily

involved a reduction of rates on the same commodities from intermediate points to Minneapolis on the same line, more or less?

A. Why, naturally, I would say yes. Litchfield is not located where it controls the rate to any point unless it should be an intermediate point.

Q. Or one farther away on the same line?

A. Well, what I meant was it is not a junction point.

Q. That is right, but a substantial reduction from Litchfield to Minneapolis on coal and lumber and grain would take the stations near Litchfield, but between Litchfield and Minneapolis would also have to be adjusted, unless Litchfield was out of proportion, to begin with?

A. Yes, that is true; of course, there might be a blanket of rates intervening, but I think not, in the case of Litchfield, there is no occasion for it; there is no occasion for any blanket there. Of course, answering that question more directly, there should not be any intervening rate higher than the Litchfield rate, anyway.

Q. Now, at that time, was not the Pipestone-Minneapolis rate made on the basis of the Great Northern distance, 202 miles, or whatever it is, to Minneapolis?

A. Well, I wouldn't want to indicate, Mr. Butler, and I do want to disabuse your mind of the thought, if you entertain it, that distance was a very important factor in that adjustment.

Q. No, I understood you to say, in your testimony, that you did not consider it a controlling factor, but in making the rate was that distance taken as the basis; that is, what would express the rate? not the reason for it, but to express it.

A. I hardly think so.

Q. But it was the controlling rate from Pipestone, of course?

A. Oh, yes.

Q. And so, to Duluth, the rate from Pipestone to Duluth on the Great Northern, at the time of this Litchfield adjustment, was the controlling rate from Pipestone to Duluth, because it is the short line?

A. From Pipestone, yes.

Q. Now, that is true, notwithstanding the Great Northern from Pipestone to Duluth is an interstate road?

A. Of course, I don't want to answer that in the affirmative and convey the idea that the Commission would undertake, or claims, to exercise any jurisdiction over that rate, and if it does not and could not by any possible means enforce that rate as against the Great Northern Company, while it is controlling, I don't think that it is departing from the fact when I say that it was entirely agreeable to the Great Northern Company to put in that rate at that time.

Q. Well, I understood that the whole thing was adjusted, but, as a matter of fact, as respects the particular feature we are talking about, the controlling factor to Duluth was the Great Northern short-line distance of 304 miles as against 390 of the Omaha, 430 of the Milwaukee and 436 *via* the Rock Island and connection?

A. Yes, I think that would be true; that is, I think if the Great Northern put that rate in (I won't make it with the statement that it would be done voluntarily) I don't think there is any question that if the other roads did any business between the same two points they would have to observe that rate.

Q. Now, the Great Northern, beginning just south of Duluth where it enters Holyoke, where it enters the state of Wisconsin, runs diagonally in a southwest direction through Pipestone, and out of the state into, I guess it is South Dakota, isn't it?

A. Yes, it goes to Sioux Falls.

Q. Now, Litchfield, is that on the main line of the Great Northern?

A. No, it is a cross-line which is just east of Willmar.

Q. Litchfield, then, is on what is called the Willmar branch?

A. Yes, sir.

Q. Now, adjusting the rate from Litchfield to Minneapolis, and from Litchfield to Duluth, would be *via* Minneapolis or *via* Willmar, or both ways?

A. Well, there is a point in there, Mr. Butler, which is just the dividing line, I don't remember where that is.

Q. Well, I don't know that it is important now. The Great Northern, then, with respect to this line that I speak of, from Holyoke, near Superior, to Pipestone comes into competition with all the railroads in the state except the Rock Island, I think, does it not?

A. You mean by intersection?

Q. Yes, by intersection at various points.

A. Yes, excepting the Soo.

Q. Well, the Great Northern controls the situation on the Soo by competition by means of other lines?

A. Yes, sir.

Q. So, then, it is safe to say that, by means of its other lines and this particular line from Holyoke to Pipestone, it is in a position, by competition, to control rates, (I don't mean all the rates, but some of them) at an important point on every other road in the state except the Rock Island?

A. There is lots of force in that, Mr. Butler.

Q. For example, the branch that I speak of crosses the Northern Pacific near Hinckley?

A. Yes, sir.

Q. And again at St. Cloud?

A. Yes, sir.

Q. Then it crosses the Soo somewhere in there, doesn't it, at Paynesville?

A. I had forgotten that.

Q. And crosses another branch that is at Willmar?

A. Yes.

Q. And the Milwaukee near Granite Falls?

A. Yes, the Milwaukee at Granite Falls.

Q. The Minneapolis & St. Louis at Hanley Falls?

A. Yes.

Q. The Northwestern down at Marshall, in Lyons county?

A. Yes.

Q. And the Northwestern, again, near Burchard?

A. It crosses it, I have forgotten where.

Q. And meets the Omaha and the Milwaukee and Rock Island at Pipestone?

A. Yes, sir.

Q. So that this Litchfield adjustment along that line made adjustments necessary on the Rock Island, the Milwaukee, the Omaha, the Northwestern, the Minneapolis & St. Louis, the Northern Pacific and the Soo and other branches of the Great Northern itself?

A. No, I don't think so, Mr. Butler.

Q. Well, none of them?

A. If that adjustment had been made at a junction point, there might be more or less force in that statement.

Q. Well, you told me that, in order to have it right, as I got your answer, from Litchfield, you adjusted along the line of the Great Northern to Pipestone.

A. You misunderstand me, Mr. Butler.

Q. Well, you did adjust to Pipestone at that time?

A. Yes, that is true.

Q. Well, then, let us take the adjustment to Pipestone.

A. From Pipestone?

Q. From Pipestone in.

A. Yes.

Q. Then referring to that as the cause, that would require

adjustments upon the Rock Island, the Milwaukee, the Omaha, the Northwestern, the St. Louis, the Soo, the Northern Pacific and other parts of the Great Northern itself, would it not?

A. That would be true if the adjustment were based upon the Pipestone adjustment, but that is not at all the case.

Q. Well, you reduced to Pipestone. Now, it did affect the Minneapolis & St. Louis, by reason of the Hanley Falls situation?

A. Yes; I say if the Pipestone adjustment, or reduction, if you please, were the prime cause of the investigation and the result of the investigation, it would have the effect.

Q. Well, now, at this time, in 1903 or 1904, whenever it was when this subject came up, on the occasion of a Litchfield complaint which led to further inquiry, as I understood you, there were adjustments made, Mr. Staples, of these rates?

A. That is true.

Q. And extended over a great territory?

A. Yes, sir.

Q. Practically all the state?

A. Well, different parts of the state.

Q. Now, what consideration was it that brought this matter to the northwest part of the state into the Red River valley, if it went there?

A. Well, I don't think there was very much concession in the northern part of the state.

Q. You think that wasn't much affected by that situation?

A. Not very much.

Q. Now, recognizing the two principles which you referred to this morning, to-wit, that distance is not controlling and that blanketing is right, a rigid tariff, on the plan of the tariffs here in litigation, would work havoc, would it not?

A. I don't regard it as at all a practical proposition.

Q. And you know what I mean by rigid tariff?

A. Yes, sir; maximum and minimum.

Q. This state presents a situation where distance must be regarded and where blanketing ought to be permitted?

Mr. O'BRIEN: If I am not interrupting you, I wish you to understand each other there. What do you mean by saying you don't regard it as a practical proposition?

WITNESS: Oh, my answer to Mr. Butler?

Mr. O'BRIEN: Yes.

WITNESS: Why, I understood Mr. Butler's question to be whether in my opinion, what he styled a rigid tariff is practical. I understood him to mean a tariff which is both a maximum and a minimum.

Mr. BUTLER: I so meant.

Mr. O'BRIEN: Mr. Butler's question was a rigid tariff upon the plan of the tariffs under consideration, and your answer to that was that it is entirely impractical.

WITNESS: Well, I perhaps may be indebted to you.

Mr. BUTLER: I meant the same thing Mr. Staples did. There is a certain scheme or plan followed in getting at the figures, do you see?

Mr. O'BRIEN: Well, but we claim there is nothing rigid about it since there is only a maximum applied.

WITNESS: I didn't understand Mr. Butler to mean that there was.

Mr. BUTLER: I don't say that there was or intend or imply that there was. I simply intend to ask him what would be the situation if such was the fact.

Mr. O'BRIEN: Will you read Mr. Butler's question.

Question read.

WITNESS: Perhaps I took too much for granted. I certainly understood Mr. Butler, and I think he understood me.

Mr. BUTLER: Yes, I think so.

WITNESS: I think his question was whether I would regard a rigid tariff as a practical proposition.

Q. Yes, sir.

A. Considering the situation and the general lay of the roads in the state of Minnesota.

Q. Yes, sir; built on the plan that this one is built on, that the figures arrive at on the basis of distance.

A. Well, I had no thought in mind of what is involved in this particular tariff. A rigid tariff might be built upon that plan, a definite fixed rate for a specific mileage, or it might be a definite rate between two points.

Q. Well, if you take the tariffs that are in and make them rigid, it would then not be impracticable, would it, the tariffs that actually apply from the points, and say that they shall not be changed, that is the end of the chapter and still it is a reasonable tariff if other things admit of that?

A. That they are rigid, Mr. Butler?

Q. Yes, when they are in.

A. They are rigid now because of the fact that they stay as they read until they are authorized to be changed; but, they are not built upon the same plan as this tariff, except that this tariff would result in the same condition, perhaps with the changed relation in its practical application.

Q. That is just what I am coming to, Mr. Staples. You are anticipating the point I wanted to bring out. The tariffs here in litigation are maximum tariffs?

A. Yes, sir.

Q. They are not rigid because the companies are permitted to disregard distance and to blanket, when they come to put in the tariffs,—and do do that, as a matter of fact, do they not?

A. Yes.

Q. And ought to, in your opinion, and must, in order that there be any reason in the tariffs at all?

A. Well, in order that no injustice shall be done the companies themselves.

Q. Yes, blanketing is a good thing for the community as well as the company, isn't it? disregard of distance is a good

thing for the community as well as the company?

A. Why, sometimes it seems necessary, in order to maintain a fair relation between different points or different lines.

Q. Now, your exhibit 3-D—Staples, statement giving commodity rates prescribed by Chapter 232, laws of 1907, for distances of fifty miles and multiples thereof, and terminal rates actually maintained by respective railways from stations approximately equally distant from terminals,—Now, in that exhibit, the figures which are taken from the schedule in Chapter 232 are the actual figures there prescribed for the distances read, are they not?

A. I assume so, yes, sir.

Q. And this exhibit, therefore, is based, as far as the figures from the law is concerned, upon the hypothesis that distance alone will be regarded and that there will be no blanketing?

A. The intention there, Mr. Butler, is to indicate the highest rate which may be charged for that particular mileage, as contained in Chapter 232.

Q. It was to call attention to the inequalities, was it not, that existed before?

A. No, oh, no, I hardly think so. I think that the inequalities are presented in the rates showing the rates charged by the different lines.

Q. Yes, on that table?

A. Yes; but I don't think those other figures are put there for any purpose other than to indicate or to enable a person to answer what—

Q. But you know, do you not, Mr. Staples, that if Chapter 232 were to be put in effect, and these two rules which you have referred to as disregarding distance and permitting blanketing were to be applied, you would not get those figures at all?

A. In many cases that would be true.

Q. And there would be presented, would there not, similar—

I will not say the same, but similar—inequalities as existed before, as now exist?

A. Why, not to so great an extent. I think that, on the same line in the same direction, in a more of less degree that would be true, but I do not think that the same inequalities would be presented when you compare the rates upon the different lines.

Q. Well, let us see. Take Pipestone, Great Northern, to Minneapolis, 202 miles. Say if you read the 202-mile schedule, and assume that they put it in, that being the short line, it would fit, would it not?

A. Well, the Great Northern wouldn't have to put that rate in. I don't know whether they would or not. They were the controlling line; they wouldn't have to put it in if they didn't want to.

Q. They couldn't go above it, could they?

A. Why, yes, they could; nothing to hinder at all.

Q. To Minneapolis?

A. To Minneapolis they would.

Q. That is, if Chapter 232 went into effect?

A. Yes, they would have to put the rate in to Minneapolis, but not to Duluth.

Q. I am talking about Minneapolis.

A. Oh, I beg your pardon.

Q. I am talking about Minneapolis, now. It would have to do that?

A. Yes, sir.

Q. It would have to put it in, wouldn't it?

A. I think it would put it in.

Q. It would have to, wouldn't it? that is the law.

A. Well, I think it would put it in.

Q. Now, if the Omaha engaged in that business at all, it couldn't get more than the 202-mile rate, could it?

A. It couldn't get more than the Great Northern.

Q. If the Milwaukee put it in, and hauled 274 miles, it couldn't put in any more than the 202-mile rate, could it?

A. It couldn't put in a higher rate than the lowest.

Q. So that immediately you could build a table showing inequalities between these roads,—that the Great Northern charged for 202 miles what the Omaha did for 214 and what the Milwaukee did for 274,—if that is the difference in the mileage?

A. In that particular case that would be true.

Q. And that is simply an illustrative situation, that is not uncommon the state over?

A. It is a very glaring one.

Q. It is a good one?

A. From your side of it, of course, it is a splendid one, yes, sir.

Q. Now, the Milwaukee road, which has this 274 miles against the 202 of the Great Northern, could, I take it, go out of business there and not put in the rate?

A. They could, if they desired.

Q. Now, could they go out of business on one class?

A. Did you mean technically, Mr. Butler?

Q. I mean by not putting in the rate.

A. Yes, they could if they desired.

Q. And could they in like manner forego the business, by putting in the rate on some class and not on others? for instance, put it in on livestock and leave it out on lumber.

A. Oh, yes.

Q. Put it in on coarse grain and leave it out on wheat?

A. Yes.

Q. And where they put it in they would have to blanket to equalize the distance, have to blanket a distance of 72 miles?

A. Well they would have to blanket back to where the mileage and the rate wouldn't exceed the maximum.

Q. Well, that would be 72 miles?

A. Yes, sir.

Q. So that you might find a blanket of 72 miles on wheat and no blanket on coarse grains, a blanket of 72 miles on live-stock and none on lumber, a blanket of 72 miles on hard coal and none on soft coal, depending whether or not the long-haul company elected to meet the short-line rate?

A. I think that might be such a case.

Q. And if so, that would build up these inequalities with respect to distances, the same in kind, perhaps, not exactly the same in degree, to that referred to on your Ex.-3-D—Staples?

A. My judgment is that you are going to find the inequalities just as you do find them now in the merchandise tariff which is in effect.

Q. I was about to come to that.

A. Not of the same character as before—

Q. Not so much you mean?

A. Yes, not so much; but I don't think I ought to sit here and answer these interrogations without saying that it certainly is apparent it was the intention to reduce the rates. It wasn't wholly a question of weeding out or wiping out such illustrations as you have given there, because my testimony here makes it clear we don't expect to do that and make practical tariffs or tariffs under which the different roads in the same section can do business, I think those differences are bound to exist, and I wouldn't want to hold out the idea, for a minute, that we expect to eliminate them, for we do not.

Q. Now, there is no place in the world, is there, Mr. Staples, where there is a tariff in practice as harmonious to look at as are the schedules in your order of September 6th and in the act of Chapter 232?

A. Oh, yes; in several of the states.

Q. I mean the tariff in actual practice.

A. No, I don't think so.

Q. That is what I mean. It is easy to make maximum

tariffs that are harmonious as to distance and classification and all that, but when you come to apply it in a territory like Minnesota, with its competing railways, 8,000 miles in all, when you come to get the figures in on the various roads and take the conditions into account, it is not harmonious at all, as it looks upon the paper, is it?

A. It is just as harmonious as it was ever thought it would be,

Q. Well, I know. Yes, I understand that, but it was never thought that it would be harmonious?

A. No, sir, and when you say, Mr. Butler, that it is easy to make the tariff, I don't want to assent to that, I think it is an extremely difficult proposition.

Q. Do you know any place in the world Mr. Staples, where there is a tariff on the precise principle of your order of September 6, 1906—

A. Why,—

Q. —extending for a distance of 500 miles?

A. There are several states which have distance tariffs, if that is what you mean.

Q. No, I meant this, Mr. Staples: I mean take into account the method of building it up and the principle upon which it is constructed, which has been adverted to a number of times —given the rule, (that is, the relation of the classes and the location,) on the schedule of any one figure you can construct the whole table?

A. Yes.

Q. Now, do you know of any similar tariff anywhere in the world—there may be, I don't know—where that regularity, of method obtains?

A. I have read a good many tariffs, and perhaps I can answer your question, maybe to your satisfaction, when I say that Mr. A. B. Stickney, who, I think has read more tariffs than I, pronounced this to be the most perfect tariff he ever

read. So I assume that he never read any just like it.

Q. You never did, did you?

A. Oh, I think not; that is when I say "not" I mean where the graduate was the same.

Q. Or so regular?

A. Well, I don't think I could answer.

Q. Now, it must always be borne in mind, in all attempts to get at the revenue derivable from these two schedules, in the actual work of the carriers, that the maximums cannot be obtained?

A. Yes, sir.

Q. And it must be understood, must it not, that the figures in these tariffs are higher than the figures that can be applied by the companies, as a practical matter, taking into account their interests and the public interests?

A. Why, I can best answer that, Mr. Butler, by referring to the tariffs which the companies have put in themselves, under the order, and in a very large measure they carry the maximum rates provided in the order.

Q. Well, now, that applied to classes?

A. Yes, sir.

Q. Of course, a slight difference in rates upon the first class, we will say, may be maintained much better, may it not, than a similar slight addition could be maintained upon coal or grain, which are the principal commodities that move in great volume? In other words, the price to the consumer is affected more immediately by a change in the grain rate or the coal rate than the price of hats or caps or other high-class material is affected by a change in rates on those things?

A. Yes, that is true, but there are a great many articles, Mr. Butler, which move under the class rates which are in very general use by the people.

Q. I understand, but I picked out the higher classes to make clearer my point.

A. Yes, that would be true.

Q. But still, in the lower classes, for instance, like coal—Well, it is not a class?

A. No.

Q. But we will take Class E, for example. Probably some of the things that move under that—

A. Well, Class E would cover brick.

Q. In which case the price is affected immediately and directly by the freight rate?

A. Yes.

Q. Just the same as it is on coal and grain and livestock and lumber?

A. I think—Yes.

Q. So in the application of Chapter 232, those seven classes, all being made up of articles the prices of which are immediately affected by the freight rate, you would expect to find more blanketing, would you not, and more disregard of distance, than in the merchandise schedule of September?

A. Yes, that would, I think, be true to a greater extent.

Q. So that the actual tariff under the class rates would not, in this regard, be taken as a perfectly fair criterion for what would happen if Chapter 232 were applied?

A. I don't think it could.

Adjourned until Tuesday, March 2nd at 10 A. M.

FEDERAL BUILDING, St. Paul, Minn., Tuesday, March 2, 1909; the hearing was resumed at 10 o'clock A. M.

CHARLES F. STAPLES,

recalled for further cross-examination, testified:

By Mr. BUTLER:

Q. Mr. Staples, when we adjourned last night we were considering inequalities similar to those shown by Ex. 3-D—

Staples, and as I understand it, reached the conclusion that similar inequalities (I don't mean the same in degree) would necessarily exist if the schedule contained in Chapter 232 were to be applied, by reason of the application of the rules disregarding distance and permitting blanketing. Now, I want to ask you if such inequalities, more or less substantially, would not arise between rates to different points on the same line for similar or same distances, and on different lines, as well as inequality in relation of rates on different commodities moving under like circumstances.

A. In making a practical application of the tariff, in my judgment, inequalities would show but not to anywhere near the extent they do now, either on the same line or as between the different lines. As I said yesterday, an examination of the merchandise tariffs put in by the companies and compared with the old tariffs would be an illustration, but it would not apply to the same extent in the case of commodities.

Q. Because the price of commodities is governed almost directly by the kind they are?

A. Well, certain commodities. When I say commodities, I mean to apply that to those commodities which are carried under so-called commodity rates, and that would apply to grain, coal, lumber, livestock, which are covered by this tariff; those differences, however would be more or less varied. In the case of grain they would be somewhat marked, without doubt. In the case of livestock, they have to carry, on parallel lines, at practically the same rates; it is absolutely necessary, because livestock can be driven across the country and is driven, in case there is any advantage in rates, and in case livestock which is tributary to a town is not marketed there, the town always comes in and complains, contending that it takes trade away from their town and claiming a certain local consideration.

Q. Now, the situation at Pipestone will find illustration of

the competition between towns compelling inequality in rates for the same distance; for example, we have shown a difference in distance from Pipestone to the Twin Cities, on the Great Northern and Omaha, and the Milwaukee & St. Paul, the Milwaukee & St. Paul being longer by sixty miles, or such a matter, than the Omaha. There are, between Heron Lake and Pipestone, on the Omaha, eight stations, and between Prairie Junction and Pipestone on the Milwaukee, six stations; the roads are substantially parallel for that distance and not far apart, ranging perhaps from two to eight or ten miles apart. Now, as a practical necessity and in order to do justice to these towns and stations, the rates on the two roads, from these contiguous sections of line to the markets at Minneapolis and Duluth, must be the same or substantially so; am I not right?

A. In the case you cite, with the roads as close together as they are, upon the principal products reaching the terminals, no doubt that would be true.

Q. It would be impractical and unjust to maintain a different schedule of rates on those different roads on these commodities, would it not?

A. Well, I will answer your question, but I don't think you put the question you mean. It would be impractical and unjust to maintain different rates at opposite stations on those two roads.

Q. That is what I meant.

A. Well, I assumed so, you said a different schedule of rates.

Q. Well, I mean different rates at opposite stations when I say difference of distance.

A. I think it would be unjust.

Q. It would be discrimination, wouldn't it, unjust discrimination, in your judgment, a matter that ought to be stopped?

A. Well, I wouldn't want to say,—it might be unjust, it

would be unreasonable.

Q. Now, your order of December 14, 1906 (and Chapter 232) creates seven new classes of freight, as I understand it?

A. Well, I hardly think I would have to answer that in the affirmative. It establishes rates upon seven classes of freight which have been carried and defined by the companies, or at least given, by the companies, special rates, or rates other than those provided in the classification.

Q. Well, there never was known before, as far as the companies were concerned, any classes 11, 12, 13, 14, 15 or 16?

A. No.

Q. Or 17?

A. No. And I ought to say, at this juncture, that the Commission never originated that. It was no part of the Commission's order, in the first instance. I don't say we refused to endorse it, we had nothing to do with it; there was no occasion for it, and I certainly never would incorporate it in an order.

Q. The classification?

A. The classification.

Q. Your order—

A. Did not so classify it.

Q. That is, it didn't name them as classes, but it grouped the commodities as they are grouped?

A. It named the commodities.

Q. Yes, but it didn't name the classes?

A. No, sir.

Q. Didn't number the classes?

A. No, sir.

Q. But your order did group—

A. Yes, sir.

Q. —the commodities, precisely as they are grouped in Chapter 232?

A. Yes, sir.

Q. So they amounted to the same thing, except the mere matter of name?

A. Except that it apparently opens a field for your pertinent inquiry that it seems a new classification has been created.

Q. Well, now, there is no such classification anywhere else, that you know of, is there, as classification?

A. None has come to my notice that I recall.

Q. In any other state or jurisdiction?

A. I don't recall it. I don't mean to say that that changes conditions materially over what they have been heretofore.

Q. Now, this Ex. D shows what the rates were on the various commodities—

A. Yes.

Q. —then unclassified?

A. Well, unclassified so far as giving it a number is concerned.

Q. Well, were they grouped exactly the same, so that all the things in your Class 11 moved at exactly the same rates between all points on all railroads? That is what the act requires. Was it that way before, or did you pick out this commodity, that, and the other, which is mentioned in Class 11, theretofore taking various rates, and put them together as a class and fix exactly the same maximum rates?

A. Now, what I undertook to explain, was that the Commission in its order did not designate these different groups of commodities and give them a number, calling them Class 11, 12, 13, etc., as is done in this act, but we did group the commodities just the same as they are grouped in this act, and indicated the rates at which those commodities should be carried. The legislature has taken our groups and has given them a number which indicates a classification for them. What I meant to explain was that we did not do that; we did not classify them but we did group them, and our

groups are different, in many cases, from those which had been provided by the railway companies. That is Mr. Butler's question, whether they are grouped the same as they had been before. Now, I can explain that best by saying this: that, for illustration, we group wheat, flaxseed, broom-corn seed, hemp seed, millet seed, popcorn, castor beans, Hungarian seed, buckwheat, buckwheat flour, potato flour, wheat flour, prepared flour, and all uncooked grain, or cereal products manufactured from wheat, into one group. The legislature has said that group shall be called Class 11. Now, the railroads before, and they do to-day, for that matter, before this order was issued or this act passed (take the Great Northern road, for instance, and, I may say, the Soo and the Northern Pacific) would, in almost all cases carry the same rates and classification or groups of commodities,—carried wheat, flaxseed, coarse grains, and practically all these other items enumerated, in what is here called Class 11, and gave them one rate. We established one rate for these items here enumerated, which covered wheat, flaxseed and all these other items, which were also covered by the roads, and are to-day, but we separated from those coarse grains and gave coarse grains another rate.

Q. Higher or lower?

A. A lower rate. Now, the southern roads, as is indicated upon Ex. 3-D, did not give the same rates, in many instances, and in most instances. Wheat carried a higher rate than coarse grains. Sometimes flax carried a higher rate than wheat; many times the same rate as wheat on the different roads in the southern part of the state. Of course, the rates established by the Commission are maximum rates, and whatever rates should be put in under those maximums by the various roads would necessarily have to observe the difference which we provide.

Q. That is, observe the classification?

A. Yes, sir, observe the classification, in its application,

if they gave a rate to wheat under the maximum there.

Q. They would have to do the same with millet seed and popcorn, and all these other things named in Class 11, wouldn't they?

A. No, because all those items in Class 11 carry the same rate as wheat.

Q. Well, I say, if they departed from the maximum with respect to anything in the class, they would have to depart from it as to the whole class?

A. Yes, sir.

Q. In other words, you would not permit the railroad companies to classify again, according to their own views, below the minimum?

A. Below the maximum?

Q. The maximum, I meant to say.

A. Yes, because the maximum prescribes the rate and names the commodities which shall—

Q. —All go alike?

A. —all go alike.

Q. You meant no, that that wouldn't be permitted? You said "yes."

A. Well, I meant no, it wouldn't be permitted.

The MASTER: There couldn't be any change of relation?

WITNESS: The relation would have to remain the same.

Mr. O'BRIEN: Well, isn't that largely a question of what the Commission would say?

WITNESS: Well, when I said that, Mr. O'Brien, I am answering so far as the order is concerned.

Q. And as far as the law (as you understand the act itself) is concerned, independent of any repeal of the act, or any part of it, by order of the Commission or by the legislature?

A. Certainly.

Attorney General YOUNG: Do I understand, from your answer, Mr. Staples, that if any road concluded to carry wheat

for a less rate than the maximum, they would also have to carry all those other commodities at that less rate, or isn't that true?

Mr. BUTLER: All the commodities in Class 11.

Attorney General YOUNG: The different commodities may vary, provided they are all kept within the maximum?

WITNESS: Why, Mr. Young, I would answer that question this way: The railway companies, prior to the enactment of the statute in 1905 (which forbids the changing of a rate) used to take out certain commodities, say in Class 5, and give them a lower rate than they did to other articles carrying the Class-5 rate. Now, that was giving an advantage to certain shippers, and, to-day, if they make application to carry certain items carried in Class 5 at a lower rate, the Commission permits it, on condition that they take those items out of Class 5 and give them a commodity rate which shall become permanent. But we would not recognize the right of the company to take certain items out of the classification and reduce the rate upon them and not reduce the other items which are carried in the same class.

Attorney General YOUNG: I understand you now.

Q. To make that perfectly clear, the group that the Commission made (the first group) in its order of December 14th, included wheat, flax-seed, broom-corn and other articles; that group has been denominated as Class 11 by the legislature; now, the rates prescribed in Chapter 232, are maximum rates, but without further legislation, either by the Commission or the legislature, I understand you to say, in answer to General Young, that if the company were to file a tariff less than the maximum on wheat, it would carry with it flax-seed, broom-corn, broom-corn seed, hemp seed, and all of the other articles named in this group, now called Class 11; am I right in my understanding?

Mr. O'BRIEN: We object to that as incompetent, irrelevant

and immaterial and asking for the opinion of the witness as to what he might do in his official character, under certain circumstances, which do not exist at the present time. The act speaks for itself, and it clearly appears what the effect of the act is from its own terms. As to what the attitude of the Railroad & Warehouse Commission would be, even if the witness were the entire Commission, it would not be proper to ask him, suddenly, when a question neither contemplated by the counsel nor by himself comes up as to what his official action would be, and certainly not, when he is only one member of a Commission composed of three persons.

Mr. BUTLER: I didn't intend by the question to call for what his official action might be; I intended to call for what he understands the practice would be under this order that he made, or under the act which puts together certain articles as Class 11, whether it would be open to the railroad companies to classify for themselves under the maximums, or whether or not the classification, until modified by legislation, either by the Commission or by the legislature, is fixed; that is all.

The MASTER: Isn't that a question of legal interpretation?

Mr. BUTLER: I don't think so.

WITNESS: Well, really, I think the question (without any wish to dodge it, for I haven't any at all) is purely a legal question; I haven't any question about that.

The MASTER: I think you are right, Mr. Staples.

WITNESS: I have no desire to dodge it at all.

The MASTER: If it is insisted upon, of course, it will have to be answered.

Mr. O'BRIEN: Well, at the suggestion of the Master, I suppose that, for the first time in the history of railroad legislation or rate cases, the counsel for the State might advise an official of the state not to answer.

Mr. BUTLER: Well, is there any objection to counsel stating?

The MASTER: The official of the state is insisting on his privilege of not answering if he wants to?

WITNESS: Oh, no, not at all.

The MASTER: Well, do you insist on the question, Mr. Butler?

Mr. BUTLER: Well, my notion is this: that they have spent a great deal of time as respects showing that the order and the act would prevent inequalities, such as were called attention to by Ex. 3-D; now, if it was the intention and understanding and is the fact (I didn't know I was stirring up so much difficulty for anybody when I asked this question) that the railroads themselves might, under the act, classify below the maximum as between flax and wheat and hemp-seed and pop-corn, etc., that would have some probative value as to whether or not the equalization claimed by these exhibits was probably being affected, or whether or not the very same conditions in that regard would continue to exist. That was what I was coming to, and I didn't suppose there was any doubt about it at all, I didn't suppose it was a matter of any legal difficulty at all; I supposed that, the classes being fixed, the rate had to speak of the class and could not separate the classes and speak of the various commodities within the classes. So I will not press the question in its present form, but I will try to find out by asking him to assume it first one way and then the other, and see what effect it would have upon the question of equality or inequality.

Attorney General YOUNG: The State does not claim, if your Honor please, that there is a law passed here which makes equality compulsory. The equality is in the maximum fixed by the law. The railroads may put in a lower rate, which will produce inequality again,—the chances are they will not do it. The State did not assume to fix minimum rates

and therefore it did not assume to guarantee perpetual equality, because there is a maximum equality, and that is all.

Mr. BUTLER: What is your position, General, as to the right of the railroad companies to give wheat and flax different rates between the same points?

Attorney General YOUNG: So long as they do not charge over the maximum provided by that law they may charge what rate they please. That is my view of it.

The MASTER: I assume that would be a legal question. I can see one phase of the question, though, that might make it a proper question, as it might affect his testimony generally in the case; that is, he may be wrong or he may be right in answering the question; it might perhaps give some effect to other testimony in the case generally.

Attorney General YOUNG: Well, that law simply provides this: It sets certain commodities together in a group and says upon this group of commodities there must not be more charged than this rate per mile, but it does not say that you must always continue to charge the same rate on each one of those, but upon this group you must not charge a greater rate than the maximum here provided.

The MASTER: It is not claimed, then, but what they may charge different rates for different commodities?

Mr. BUTLER: In the same class?

The MASTER: In the same class.

Mr. BUTLER: For the same distances?

The MASTER: For the same distances. I understand that is conceded.

Attorney General YOUNG: We will concede that is the law.

Q. Then, Mr. Staples, it is the position of the State, as I understand it, explained here, that under this law the railroad companies would have a right to charge one rate on wheat, another on flax-seed and another on each of the various articles included in Class 11 of Chapter 232, over the same tracks,

for the same distances, at the same time. Now, if that be true, it would still be open to the railroad companies, of their own motion to file tariffs which would result in precisely the same inequalities which have been adverted to in the testimony, and some of which are pointed out in the exhibits, particularly in Ex. 3-D; am I right in that?

A. In the first instance, in the filing of the tariffs, if that view of the law is true, such would be the consequence or result.

Q. So that the grouping together, either in your order or by the legislature, would not, of itself, prevent the making of a variety of rates, one for each of the particular commodities named in the class, and would not tend, except in so far as the railroad companies wish to permit it, to equality?

A. Assuming that view of the law to be the correct version, that might follow.

Q. That would follow, of course, wouldn't it, if that is the law?

A. Well, it might follow.

Q. Well, it would follow that the railroad companies would have a right to do it?

A. Yes, if that were the law.

Q. Yes, just the same as they always had the right, except that they would put a maximum above each one of this group of commodities?

A. In the first instance, that would be true, Mr. Butler, but I ought to say, at this juncture, that any such instance would be subject to review by the Commission.

The MASTER: That is what I wanted to know.

Q. And correction?

A. And correction, if, in the opinion of the Commission, it ought to be corrected.

Q. Just as it has been for many, many years when these inequalities, that have been adverted to in your direct exam-

ination and shown by some of the exhibits, particularly Ex. 3-D, have grown up; it would be the same thing right over again in that regard, wouldn't it?

A. Yes, that would be true in a measure. Of course, it must be perfectly apparent here that this attempt has been to correct what, in the opinion of the Commission, has been flagrant inequalities, unreasonable inequalities in rates.

Q. But, as far as the act is concerned, on the view of it expressed by General Young, there would be nothing to prevent the railroad companies from giving wheat, in Class 11, a lower rate than oats, in Class 12, or barley, just as has been shown by some of these tables that have been introduced here?

A. I think I answered it twice that that might follow, that is, that condition might follow.

Q. Well, this particular example that I gave you now, that Class 11 takes a lower rate (you told us) than Class 12; oats is in 12.

A. You mean Class 12 takes a lower rate?

Q. Class 12 takes a lower rate than 11?

A. Yes, sir.

Q. Oats is in 12 and wheat is in 11. Under the view expressed by General Young, the railroad companies might give oats the higher rate if they kept within the maximum?

A. Well, I will answer that this way: that if they did, it would have to be a very peculiar and exceptional case if the Commission permitted it to remain so.

Q. Now, Mr. Staples, when the Commission made its order of December 14, 1906, did or did you not intend that all the commodities in each group should take the same rates either at or below the maximum?

A. That was the intention of the Commission; always, of course, with the reservation that any case is subject to review.

Q. For further legislation?

A. Yes, sir, for further consideration.

Q. And order?

A. Yes, sir.

Q. And that is legislation?

A. Yes, sir.

Q. So that it was the intention of the Commission that wheat, flax-seed, broom-corn seed, hemp seed, millet seed, pop-corn, castor beans, Hungarian seed, buckwheat, buckwheat flour, potato flour, wheat flour, prepared flour, and all uncooked grain or cereal products manufactured from wheat, should take the same rates below the maximum, and should be held together as a group corresponding to the things defined as a class by the Western Classification in the merchandise orders; that was the purpose of the grouping, wasn't it? Is my understanding right?

A. Now, I can answer that question best by reading this extract from our rate-order, under date of December 14, 1906. Reading from the order under date of December 14, 1906, I find the following:

"The following commodities in carload lots will take rates as designated: Broom-corn seed, castor beans, hemp seed, Hungarian seed, millet seed, pop-corn, buckwheat, buckwheat flour, potato flour, wheat flour, prepared flour, also all uncooked grain or cereal products manufactured from wheat."

That is the group. Then it says: "wheat, flax-seed, flour rates." Those commodities which I have indicated (wheat and flax-seed) shall take flour rates.

Q. And then you fix the maximum for wheat, flax-seed and flour to be the same?

A. Yes, sir.

Attorney General YOUNG: There is a provision in the state Railroad & Warehouse Commission law, relating to railroad rates, which provides that no rate in operation may

be raised or lowered without the consent of the Commission?

WITNESS: Yes, sir.

Mr. BUTLER: That is in evidence.

Attorney General YOUNG: And that is the law which you have in mind as saying that they cannot lower the rate on one of these commodities below the other without the consent of the Commission, and the Commission would consent only if the circumstances justified it, so that, practically, they take the same rates and will continue to take them, as I understand it?

WITNESS: Yes sir.

Q. Mr. Staples, under this commodity act, the same consent that General Young refers to, to take one item, for instance, flax or wheat, out of that list and make a different rate or commodity rate for it, would exist as there does with respect to the classes, would it not? It is not permissible to break up the classes anywhere below the minimum, the whole class moves together unless the Commission further legislates; isn't that the fact?

A. That is true.

Q. And that is true with respect to this Chapter 232, isn't it, and your order? At least it is your understanding of it, isn't it, and always was?

A. Well, I have only purposed giving the practice of our office Mr. Butler; I have no controversy with the legal end of this case. I want to say that this act itself carries with it this provision in Section 3: "Whenever in a proceeding regularly pending before the Railroad and Warehouse Commission it is made to appear to the satisfaction of the said Commission that the rates herein prescribed are unreasonable, it may by order fix higher or lower rates for the transportation of any of the commodities herein mentioned over the line of any railroad in this state, and such rates when so fixed shall supersede the rates herein prescribed upon said line of railroad,

and shall be enforced as prescribed by law relating to such orders," etc.

Q. Now, the power to make classes has existed with the Commission from the beginning, has it not, as well as to make rates?

A. Yes, sir.

Q. And one power is as important as the other, in your judgment, isn't it?

A. Yes, sir.

Q. If railroad companies be permitted to make their own classification, they don't care very much who makes the rates, do they, because they can make—

A. They can manipulate the rates by changing the classification.

Q. Discriminate just as thoroughly by changing the classification, just as completely and just as wickedly and just as unjustly, as they can by changing the rates?

A. Yes, sir.

Q. And Eric Olson, whom you have referred to in your direct testimony, is authority for the proposition that the man who makes the classification makes the rates, isn't he? Wasn't that his contention in substance?

A. Why, he is not the authority that our Commission accepts, but—

Q. No, no, but he makes the claim?

A. Yes, sir.

Q. So that, Mr. Staples, referring to this Pipestone matter again, if it be left to the railroad companies to classify as—we will speak now of merchandise rates, to depart from the classification,—why, then, the schedule of rates would really have no effect at all, if they could take the higher class and move it to lower, or the lower to a higher; isn't that true?

A. You said if it were left to the railroads to classify, did you?

Q. Yes, or to move one article or line of articles from one class to another, or separate it from its group.

A. My assumption is that it was never intended they should.

Q. And the reason for classification is to avoid that very thing, isn't it?

A. Yes; but when I answered that, I did not mean to controvert General Young's view of the power of the companies, when they first adopt the schedule of rates, that they might, confining themselves to the maximum, make different rates upon the different articles enumerated in the one classification. Now, I am not discussing that; I meant to say my answer didn't imply that I was disputing his position.

Q. When you were making the order of September 6, 1906, you adopted the Western Classification, subject to exceptions that you have made here?

A. Yes. That is the merchandise order?

Q. Yes, that is the merchandise order. Did you not?

A. Why (I know what you mean), we called the Western Classification our classification,—of course with our modifications.

Q. So it became just as much a part of your order as if it had been written in it at length—with your exceptions?

A. Without doubt that is true.

Q. And your understanding was that the railroad companies could not separate the items or articles in each class and give to each article or line of articles a different rate below the maximum; you assumed that everything in the defined class would move at the same rate wherever any of it moved, unless there were further legislation?

A. Yes, sir.

Q. And your estimate of the effect of this order and your determination of its reasonableness was based upon the assumption that the classes would remain intact and that every-

thing in each class would move at the same rates; am I right about that?

A. Yes, sir.

Q. Otherwise, your order would not amount to anything at all, would it? Suppose the classes could be dismembered at the will of the railroad companies, either when they put it into effect or any other time, your order would not tend to make, or require, equality of rates or anything of that sort, would it?

A. No; of course, we are discussing now, the merchandise rates?

Q. Yes, I am now speaking of the merchandise rates.

A. And I have made it clear once, I hope, but I want to emphasize the fact, that the Commission (and it is perfectly apparent from our order) never had in mind anything in the nature of classification in this commodity-rate order.

Q. No. Now, with respect to your commodity-rate order, did the Commission, when it was determining the earnings and reasonableness of the rates, assume that all the articles in each group would move at the same, or did it assume that they might move, at the election of the railroad companies, at different rates, according to their whim, when they put in the tariffs under the maximums?

A. Why, I think I ought to say, Mr. Butler, that the assumption was—if I accept the term "classification," as used in this—

Q. Well, "group", I call it.

A. This group is the method we used—

Q. That is what I intended to say.

A. —that the rate prescribed, for example, upon wheat would be the rate which they would give to the other commodities which are grouped under the wheat and flax rate. Of course, that is only one you can point out wherein there is any particular number of items grouped together; in "coarse

grain" you have corn and rye and buckwheat, oats, the commonly called coarse grains. Coal could not carry anything but hard in one and soft in another.

Q. And it was assumed, in that order, that lath and lumber, shingles, sash and doors and blinds, should be a group and all take the same rate?

A. Yes, that group was the group taken from the group or the "classification," if you please, which the companies themselves carried. When they indicate a lumber rate their tariff provides that it covers the very items we have enumerated; we have not changed it in any respect.

Q. And your determination of the reasonableness of this order was based upon the assumption that all these things would move at the same rate and not at different rates?

Attorney General YOUNG: Your Honor, I would like to object to that form of question. I don't understand that the Complainants here are complaining because they have to charge so high a rate as these laws and orders prescribe; I don't understand they can complain as against any rate which they have voluntarily put in that is lower. Now, it is perfectly manifest, upon the face of the order and upon the face of the law that the railroad companies have the right to charge this maximum, if they see fit; in other words, the authority of the State is not interposed between them and the power to charge those rates. Now, they are not complaining, I hope, in this case, because either the law or the Commission have not attached to the schedule an order that "you must not charge less." We have a law on that subject which says they must not lower their rates, or disturb the equality of rates, without the consent of the Commision, but there is not an absolutely prohibitory provision in the law that they cannot, under any circumstances, do it. Now, the rate against which these carriers have a right to complain is the rate which we compelled them to put in, and that is the only one. They have no right

to come in here and take up time questioning about their right to put in a lower rate than the one that we prescribed; that is not in controversy. The effect of this order, if it please your Honor, and the effect of this law, was to fix a maximum, which never had been fixed before in this state. Prior to the orders made by the Commission that are here involved and the enactment of Chapter 232, inequality in rates was brought about by the railroads raising particular articles to any point they saw fit. The State fixed a dead level by these orders and law, that "above this you shall not go," but it did not make an absolutely prohibitory statement that they could not go below. They may go below if the circumstances warrant it, but in order to go below they must go to the Railroad & Warehouse Commission for consent. Now, that is the situation. If they go below, it is voluntary, and therefore they can not complain about it in this case, they are not compelled to do it.

The MASTER: You mean if they go above they must go to the Commission?

Attorney General YOUNG: They cannot go above Chapter 232? Yes, they can if they show it is unreasonable.

Mr. BUTLER: The Commission can repeal Chapter 232, if they want to, any time they feel like it. Now, General, if it won't destroy your continuity of thought at all, I would like to ask you whether you hold that, under Chapter 232, without further legislation by the Commission or the legislature, the railroad companies would have the legal right to charge, below the maximum specified, a different rate on wheat from that on flax-seed, or a different rate on corn from that on oats.

Attorney General YOUNG: Of course, I am not on the stand, but I have no objection to answering that. So far as that is concerned, I think it has been correctly stated by Mr. Staples, that, in order to put in a schedule of that kind, it would have to be put in at the time that they adopted rates under this law, or, if not, it would have to be made in the shape of a specific

application to the Railroad & Warehouse Commission to reduce the rate on that commodity to the level proposed; and if, for instance, a railroad company desired, for some special reason, to put in a very low rate on wheat for a particular time between stations, and applied to the Commission for leave to do so, it would not necessarily mean that during the life of that special rate all rates in that class would have to come down, but, as was stated by Mr. Staples, I understand it to be the fact that the Commission would not permit a rate of that kind to continue for any indefinite length of time; they might permit it to continue for a specified purpose.

Mr. BUTLER: Well, I am not trying to get your views as to what the Commission or legislature might do under given circumstances.

Attorney General YOUNG: Well, they can't, except when they put the rate in,—they can't change it afterwards, either up or down, without the consent of the Commission.

Mr. BUTLER: It occurred to me that perhaps your suggesting we were taking too much time and that this is not proper examination might be made to depend upon your view of the law, and I have not yet caught your answer whether or not you hold that, under the law, the railroad companies would have the legal right to charge a different rate on wheat than on flax-seed, for example, without further legislation on the subject, by consent of the Commission.

WITNESS: Just let me make a suggestion.

Mr. BUTLER: Let General Young make that, this is purely legal.

WITNESS: You mean by your question when they first put in the rate. When they file the schedule, they may file any schedule they please; they can't afterwards make any change without the consent of the Commission.

Q. When you say they may file any schedule they please, you mean they may charge, below the maximum, one rate for

wheat, another for flax-seed, another for hemp, another for popcorn, another for castor beans, etc., and bring those below the maximum specified in the lower classes, if they see fit?

Attorney General YOUNG: There isn't a particle of question about it.

Mr. BUTLER: And then the communities that are paying the higher rate in that class would have a right to go before the Commission and ask to have theirs reduced to the same level?

Attorney General YOUNG: But after the schedule is filed, they cannot change it without the consent of the Commission.

Mr. BUTLER: Oh, no, I understand; but, in the first instance, these are merely maximums, and the grouping or classification has no effect whatever?

Attorney General YOUNG: Yes, the limitation on the companies is that they cannot put in rates higher than that; if they want to make any change in rates, they cannot make it by raising particular commodities, they must do it by lowering particular commodities.

Q. Now, assuming that to be true, Mr. Staples, as explained by General Young, this act itself, would not have any coercive or necessary effect, as far as equality between different articles is concerned, would it?

Attorney General YOUNG: Well, now, you are asking him for a legal conclusion; so far as the compulsion of the State is concerned, it would produce equality. So far as the State is compelling him to act, it would compel him.

Mr. BUTLER: But you have just said that the State does not compel them to act, that they may charge a lower rate on flax-seed than on coal and a higher rate on wheat than on oats.

Attorney General YOUNG: But the State is not compelling them to do that. If they file, under this law, a schedule fixing the maximum, an irregular schedule, it is not by compulsion of the State. By the schedule they are made equal, but

if they want to file a lower schedule they may do so, and then they could not come in here and complain about confiscation on the maximums if they are carrying the business voluntarily at a rate that is lower.

Q. Now, assuming General Young's statement to be correct in this matter, do you think that the rights that he says the railroad companies would have in putting in these tariffs would have any effect on the aggregate amount of earnings that would be probably earned, whether it would tend to increase or lower the earnings?

A. Well, that question is an impossible one to answer, Mr. Butler.

Q. Why?

A. Because (you may make it more clear) I don't understand what you mean.

Q. Why would not those very same reasons that made the inequalities before the act make them on the application of the act, on the filing of the tariffs under it? For the railroads' purposes, (good or bad, whatever they be,) you have undertaken to show that inequalities grew up as between these different commodities that ought to be corrected; now, General Young tells us that, under this act, the railroad companies could put in tariffs differing for each particular item in the whole seven classes as long as regard for the maximums were specified. Now, would not the very same considerations which caused the railroad companies to produce the inequalities before the maximums were prescribed exist afterwards, and would not, in your opinion, the very inequalities that you are talking about be continued all below?

A. No, not at all.

Q. Why not?

A. Not in my opinion.

Q. Why not? Because the maximums are so low that they would be compelled, out of consideration for their trans-

ary, to stick as close to the maximums as possible,—is that the reason?

Attorney General YOUNG: That was the intention.

A. Why, Mr. Butler, I assume that the same practice would govern in the application of that tariff that has always governed with the companies, and that is to get such rates as they can for the commodities they haul.

Q. Yes. Now, did these inequalities which you complain of by your exhibit grow up from the disposition and attempt of the railroad companies to get such rates as they can on the commodities they haul?

A. When I gave that answer I didn't mean to intimate or indicate that the railway companies have absolutely no consideration for the parties served, but, in a general sense, I meant what I said, and I mean *now*, in applying my answer to what would occur when this new tariff is filed, that I can't assume for a moment that they are going to make the rates on the haphazard plan suggested by you. There would be no reason for it, there would be no necessity for it. There would be no reason why the railway companies would observe coarse grain rates upon wheat in the northern part of this state. There certainly would be no reason for their making a lower rate upon wheat than they would upon pop-corn, if you please, or any of the other many items which are enumerated in Class 11. There would be no call for it, no reason for it, and, as a practical proposition, it would not occur.

Q. Does the passage of the act abolish the reasons or the ability? You say that these inequalities have existed?

A. Yes.

Q. And, as I gather it, you thought that they ought to be changed and equalized, that was one of the purposes?

A. Well, that they ought to be eliminated so far as it is practical and possible to do so.

Q. Now, the same reasons would exist, from the stand-

point of the railroad companies, for maintaining them after the passage of the act as existed before the passage of it for the application of it; am I not right?

A. Why, I don't assume that there have been any particularly good reasons for their—

Q. No, but whatever they are, good or bad, they would be the same, wouldn't they?

A. Why, perhaps so.

Q. Truly so?

A. Perhaps that is so.

Q. So, that, except by force of the maximum being so low as to make it perilous to their treasury to maintain the inequalities, the reasons would not be at all modified, would they, and the same temptations to get traffic, the same temptations to discriminate as between commodities and charge a different scale from one station than from another would exist, and, if General Young is right, would be permissible under the act as has existed before, as long as they had regard for the maximums?

A. Why, technically, that might be true, but practically, I have said, I didn't think it would obtain.

Q. Why? because they could not afford to?

A. Because they could not afford to and because there would be no necessity for their doing so.

Q. Because these maximums are made so low that there is no room for any inequalities under them? They have to struggle just as hard as they can to get the last cent that is permitted by the maximums; isn't that the reason, if there is any?

A. No, I don't think so at all.

Q. Well, what is it, then, if it isn't because the maximums are so low that they can't afford to? then what would be the added inducement?

A. The same desire on the part of the companies to get all

the revenue they are entitled to would certainly remain, and they are not going to get it by reducing rates upon a particular commodity when there is no necessity for doing so.

Q. No, but the same reasons would exist after the act as before for the inequalities, wouldn't they?

A. No, I think not, and those reasons—

Q. What reasons would be eliminated?

A. Well, there are no reasons for the inequalities, many of them, today, there are no reasons at all. They are conditions which have grown up from time to time, and as time goes on they remain in the condition that they were established years ago, and the companies themselves will many times give you absolutely no reason for it.

Attorney General YOUNG: They have testified in this case that no reasons existed,—Mr. Tittemore did.

Q. And you have long been of the opinion that these inequalities were grave and serious abuses and existed without reason, and permitted them to, during your term of office, without moving?

A. Why, I think my testimony indicates here that that would not be the case at all.

Q. You don't believe that they were grave or great abuses or without reason at all?

A. Oh, yes, yes, I do, but you indicated that the Commission had done nothing in the way of attempting to remove those inequalities, and I said that my testimony here would not bear out that as a fact at all.

Q. Wasn't it your testimony that the very conduct of the Commission itself in regulating in one part and then in another, with respect to one thing and then with respect to another, produced the very inequalities referred to?

A. No, they ironed out a great many of them.

Q. And made some worse?

A. No, I don't think so.

Q. You think it was growing better all the time, do you?

A. Somewhat.

Q. So, now, wasn't the principal purpose to reduce the rates, and in the reports that are in evidence here, isn't that the purpose stated, and isn't this matter of inequality a matter that has been suggested and emphasized a great deal more since this litigation began than you ever heard of before?

A. No, sir.

Q. It is not?

A. No, sir.

Q. It was not the principal purpose to reduce rates?

A. Why, it was certainly one of the purposes.

Q. Did your order of December 14th contain a provision like Section 7 of Chapter 232 which forbade the raising of rates that were below the order to the scale fixed in the order?

A. Yes, Mr. Butler, it did.

Q. It was?

A. Yes, sir.

Q. So, now, you can't say that the purpose of the order which forbade the raising of any rates which were disproportionately low was to equalize, can you?

A. Upon that point I want to say that those rates which would be affected by that provision in the order were what is commonly called proportional rates and not local rates; and, for example, I might say that it would apply upon lumber from distributing points in the northern and northeastern portion of the state to St. Paul and the Minnesota Transfer and to grain between the Twin Cities and Duluth.

Q. Cattle and hogs anywhere?

A. I think not.

Q. Now, if the maximums prescribed in your order or in this act were permitted, would it not have the effect of raising certain rates on cattle and hogs in this state, single-line rates from points in the state to South St. Paul?

A. Why, I don't think so, Mr. Butler.

Q. Well, from Elmore, would it not raise it from $1.12 per car; from Bigelow would it not leave it $1.44 per car; from Ash Creek would it not raise it $1.28 per car; from Beaver Creek would it not raise it $1.28; and as high as $6.24 from Leroy?

A. I wouldn't say, Mr. Butler. I do not know.

Q. Well, this paper I hand you is one prepared for me on that subject by Mr. Flinn.

A. I know nothing about it; I never saw it or talked with him about it. That might be true; I don't say it is not true.

Q. I would like to have you observe the stars where he shows, if the maximums were permitted, the number of instances where the rates would be raised, and I ask you to assume that that is true and then say whether or not this provision against raising lower rates to the maximums permitted would not tend to enforce inequality rather than to wipe it out.

A. I have no purpose in assuming this nor disputing this statement, I know nothing about it.

Q. Well, assume it to be true for the purpose of my question.

A. Yes, that is simply a limitation. Of course, upon application, the companies—

Q. Yes, the legislature might change its mind or the Commission might?

A. Yes, sir.

Q. Either one?

A. Yes, sir.

Q. But assume that they had not, and until they hadn't, suppose the law went into effect as it is written, and suppose your order went into effect as it is written, and assume that these items to which I have called your attention and the others indicated on this statement furnished by your rate-

clerk Mr. Flinn shows the truth as compared with Chapter 232 and the existing rates, then you will say that the effect of that rate as respects these things would be to enforce inquality rather than to prevent it?

A. Yes; and in addition to that, amplifying the testimony which I gave a few minutes ago indicating what was in the minds of the Commission which should be affected by that provision in the order and in the Chapter, it was never intended that any such instances as these which would result in the giving or the creating of a discrimination in a certain locality would not be immediately taken up and revised by the Commission. It was impossible to reach all these instances; it never could be done. I won't say it never could be done, but it would be—

Q. A very simple way would have been by your order to permit the railroad companies to raise maximums, wouldn't it, in such cases?

A. No, in the first place, it would have been an injustice, and, in the next place, the railroad companies never would have done it.

Q. If it would be an injustice, the Commission wouldn't have taken it up and permitted it then, would they?

A. In these cases I don't mean it would be an injustice. That is assuming that these are facts.

Q. Your order was on a higher scale of 7.37 per cent than Chapter 232, wasn't it?

Attorney General YOUNG: Lower scale.

Q. Lower scale.

A. No; it was on a lower scale. I won't give the percentage.

Q. Now, if equality was the thing to be aimed at, you would have raised some rates and lowered others to get at equality, wouldn't you? you would not simply lower some and then provide that the others should stay where they were?

That is what has been done, isn't it?

A. I can't think, Mr. Butler, that you for a moment believe that I have said anything which indicated that the sole purpose or the chief purpose was that of equality.

Q. Well, I wanted you to say that it was not its chief purpose, if that is the fact, and I wanted you to say just as it is; if the chief purpose was to reduce rates and to save money to the shippers, I want you to say that, in terms, and not give any greater importance to this inequality matter than it deserves.

A. My opinion is that one had about as much influence as the other.

Q. Now, if inequality was to be "ironed out," why not raise the rates that were below what they ought to be and below the maximums which you fixed, or permit the carriers to come up to the maximums in those places if they wanted to?

A. One of the main objects of the Commission was to undertake to establish reasonable maximum rates.

Q. Now, you determined, did you not, Mr. Staples, first, as respects the order of September 6th, and your Commission promulgated its determination by the order of September 6th, that the maximums therein prescribed were reasonable on all roads between all points and all over this state?

A. That would naturally follow, yes, sir.

Q. Well, that is the fact, is it not?

A. Yes.

Q. You have followed this litigation since its inception, have you not?

A. Pretty closely.

Q. You are still of that opinion, are you not, notwithstanding the varying conditions between roads, that that order is fair and the rates therein prescribed, and each of them, are fair, reasonable and just maximums?

A. You are referring to merchandise?

Q. Yes.

A. Yes, it is.

Q. Now, there was no exception made there as to the rates that were already lower than the maximum in that order?

A. Under that order, no—

Q. Rates lower than the maximum might be raised to the maximum?

A. Yes, sir.

Q. That is, your determination was, that the conditions, varying though they be upon all the lines all over the state, fully justified those very maximums there, the highest to be permitted under any circumstances, and that the railroads could have sufficient and proper revenue by rates somewhere at or below the maximum?

A. Yes, sir.

Q. Don't you think that such an order as that would be more calculated to iron out inequalities than an order which forbade the raising of rates below the maximums to the maximums at the option of the carrier?

A. No, not when you consider the circumstances which made that restriction or which governed in the making of that restriction.

Q. Well, differentiate them. There are so many circumstances that I can't.

A. Well, I have indicated those, already, a few months ago. Those were designed to refer chiefly, and it was the intention that they should be confined really to rates upon commodities which were either shipped upon proportional rates or upon commodities which were shipped to points for distribution.

Q. Give me an instance of proportional rates.

A. Well, grain coming from the southern part of the state, or any part of the state, to Minneapolis, (which is a terminal

market,) and afterwards found advisable to be moved forward to Duluth. Now, that would not be moving to a distributing market, but it would be going forward on what is practically a proportional rate, and that rate is established, is put in. To-day it is 5 cents upon the Great Northern and Omaha roads; but it don't matter what it is now, it is whatever it was then; I don't know what it was.

Attorney General YOUNG: From Minneapolis to Duluth?

WITNESS: That is what I said or meant to say, Minneapolis to Duluth.

Q. In speaking of these differences, Mr. O'Brien asked you whether, in your opinion, they were justified; I think the difference in the scale on grain in the northern and southern part of the state was what was referred to, it appearing that the scale of rates ranged lower in the northern than in the southern part of the state; and what was your answer? What is your answer whether the difference of that scale is justified?

A. Why, no, I think they are not justified. Of course, when I answered that, I do not wish to have the answer confined to the consideration of grain alone, because that is only one of the items which enter into the traffic of a railway company.

Q. In fixing the rates upon grain in the north, you consider the iron ore earnings, too, I suppose?

A. Well, I don't know what I might consider. I want to say, however, that the iron ore was not a factor that entered into this consideration nor was it ever even spoken of.

Q. Well, I will ask you whether or not, in the fixing of the reasonableness of the rate upon grain in the north, as compared with the rate on grain in the south the earnings of the Great Northern road on iron ore carried in this state (originating in this state, at any rate,) ought to be taken into account in any degree, way, shape or form.

A. I don't think it would be. It is not a state earning;

we have nothing to do with it.

Q. Ought it to be, in your judgment?

A. Why, it couldn't be,—not consistently.

Q. That is for the reason that it is interstate business, is it, Mr. Staples?

A. Well, that eliminates it from consideration.

Q. And that is a sufficient and a good reason?

A. It is a sufficient reason, in my mind, yes, sir.

Q. So, then, the amount of the interstate earnings of any railroad company in this state ought not to be taken into consideration, in any way, shape, manner or form, in determining the reasonableness of any rate, intrastate, in Minnesota; does that generalization follow?

A. Why, that would be true. You could not say literally that is true, for this reason: perhaps indirectly it is a factor in the question of the value of the property, I don't want to define what factor, but I say you could not eliminate the question entirely.

Q. Well, if you eliminate it as to the iron ore because it is interstate commerce, you can eliminate it as to everything else that is interstate commerce, can you not?

A. Yes, except that, in a remote way, it might have a bearing.

Q. But so remote that it is not practical to take it into account; is that your idea?

A. Well, except perhaps in one or two phases of the question. You could not eliminate the question. Well, you might eliminate it, but it seems to me, that, in determining the value of the property within the state, its use for interstate business would have to be regarded. Now, what I meant when I answered your question first, was that, in the matter of earnings, it would not be a factor at all.

Q. That would not enter into the matter of difference be-

tween the north and the south, would it, whether that difference was justified?

A. No.

Q. Your answer to Mr. O'Brien was that if the traffic was all grain, the differences would be justified, but not being all grain, it was not justified. Now, I want to find out from you how you get at that; what is your method of reasoning?

A. Well, I might answer that by saying it is a deduction of mine which comes from listening to the testimony of the many experts from the different roads which was had before our Commission; it is simply a conclusion of my own.

Q. Well, you reached that conclusion before you heard the testimony, didn't you?

A. No, sir.

Q. Didn't you make this scale before you heard the testimony?

A. No, sir.

Q. Well, now, can you recall the point upon which you say a lower rate on a long haul and heavy traffic (as it is in the north, as compared with the comparatively short haul in Minnesota in the south) and why it is, on grain, that the long haul and heavy volume of traffic in the north should not take a lower rate than the opposite conditions in the south?

A. It does; the short haul gives them a much higher rate.

Q. Well, you said a higher scale of rates. Now, if the short haul in the north was lower than the short haul in the south, wasn't it before these maximums were fixed and the long haul—The whole scale ranged lower in the north?

A. That would be true, yes, sir.

Q. So the distinction you make is not applicable?

A. Yes.

Q. Now, here are the wheat-fields, up here in the Red river valley, pour great quantities of grain to Minneapolis and Duluth; down in southern Minnesota comparatively little

wheat is shipped to Minneapolis or Duluth? (I mean intrastate wheat).

A. Intrastate wheat, yes.

Q. Comparatively little is shipped?

A. Well, there is a good deal, Mr. Butler.

Q. Well, compared with the north, it is but little, isn't it, to Minneapolis or Duluth, intrastate business?

A. I know what you mean. Of course, when you take the extreme southern portion of the state, that would be more or less true.

Q. Well, the southern Minnesota branch of the Chicago, Milwaukee & St. Paul, the Northwestern running across the state to Winona, take those two important roads and their branches, carry practically no wheat to Minnesota markets; isn't that true?

A. They don't carry any, if they can help it.

Q. No, they don't carry any, if they can help it. So that the problem that was presented to you with respect to those roads was that there was very little intrastate wheat moved on them?

A. No, there is quite a good deal. I said they carry very little if they can help it. They carry it wherever they can get the long haul. Now and then shippers go that way.

Q. But they can't get a long intrastate haul to save their lives, can they?

A. Not very long, no.

Q. So, that, as compared with the railroads in the north,—the Fosston branch of the Great Northern with its feeders in the valley and the conditions of the Northern Pacific—would you say, Mr. Staples, that, as far as wheat is concerned, the northern roads have very heavy traffic and by comparison the southern roads have very little traffic or intrastate business?

A. Why, no, I would not say that.

Q. Well, how would you compare it?

A. The southern roads ship a very large amount of coarse grains.

Q. I am talking of wheat.

A. Well, I think of wheat there would be a good deal of truth in that.

Q. It would be true, would it not?

A. I can't say to what extent, but, of course, they handle more grain from the northern part of the state, comparatively speaking, than from the southern.

Q. And have a long haul?

A. Yes, sir, and therefore the producer gets a very much lower rate upon his grain than the producer does in the southern part of the state.

Q. Well, then, you say, don't you, that the difference between the northern and the southern part of the state would be justified under such circumstances and that a rate that was rigid, that required them both to charge exactly the same on the basis of distance, was wrong and inequitable and unfair because of the difference of conditions; wouldn't you say that, Mr. Staples?

A. No.

Q. You would say the same mileage tariff, applied rigidly, for the transportation of wheat, would be as fair to the roads in the south end of the state as it would be in the north?

A. If you were going to ship nothing but wheat, I would say that it would not be fair.

Q. If it was to be measured on the volume of wheat, it would not be fair at all?

A. I think not.

Q. It would be very inequitable and unjust, wouldn't it?

A. Not very; it would be somewhat inequitable.

Q. Which would take the lower rate?

A. Well, I can't conceive, I can't consider, that you can

confine it to wheat, and therefore I find it impossible to give an answer to that question.

Q. Well, now, tell me what considerations (it isn't all wheat) in traffic local to the state you take into account that equalizes them and that caused your conclusion which you gave to Mr. O'Brien that a different scale in the north from that in the south is unfair and not justified.

A. The tendency to develop diversified farming in the north is so apparent now and is resulting in the less and less shipments in the quantities of grain every year, and really is increasing the shipments of grain in the southern part of the state, that their conditions are becoming more and more the same in the north and in the south. I would not want to say they are the same, because I am familiar with the conditions to a large extent, but I say that they are growing to be similar and they are growing very rapidly to be similar. Diversified farming in the north is developing very rapidly, and those engaged in the transportation business in the north are promoting and encouraging it every day and every week,—and it is having its effect, too.

Q. Would the amount of intrastate earnings per mile of road, taken as a whole, have any bearing upon the reasonableness of the scale of rates?

A. Why, they would have some, but they don't influence me as they do a great many people.

Q. That is to say, assuming that in local business a road in one part of the state (the north, for example) would earn four times as much per mile or per annum as a road in the south, are you still of the opinion that a rigid scale of rates on grain, for example, would be justified on both?

A. Well, as I said, I am not willing to consider grain and eliminate that from other items.

Q. Well, then, I will say a rigid scale of rates on all intrastate freight.

A. Why, the northern roads are not willing to carry a particularly low rate upon grain unless they can have a particularly high rate upon classified products or commodities.

Q. I didn't quite make myself clear. Would you think the difference in earnings per mile of road per annum of one to four, taking all intrastate freight business into account, would justify any difference in rates at all?

A. Why, it might, and yet they would never have any such difference unless the question of the cost of operation was an important factor.

Q. I am speaking of the gross earnings.

A. Yes, I know you are.

Q. Suppose the gross earnings is two to one (let us take a simpler illustration) on one road in the state over what it was on another, the same scale of rates as to local business—(we are considering local business alone) that would be right, would it? Wouldn't that be a reason for a difference, Mr. Staples?

A. You couldn't consider that without you considered the operating expense and the question of net earnings; it would be impossible to do it and do it fairly.

Q. Well, we will suppose that one had no net earnings on the strictly local business and the other had some; ought they to have the same rate?

A. No.

Q. They ought to have a different rate?

A. Yes, sir.

Q. Supposing the net earnings of one was twice as much as the net earnings of the other per mile of road per annum, should they have the same or a different rate?

A. That would depend upon whether the other had sufficient net earnings.

Q. Well, let us say that neither was confiscatory at all, that they both could pay; neither one of them was confisca-

tory, but one was earning twice as much net as the other, should they both have the same scale of rates?

A. Then, Mr. Butler, if it were practical, I would say that one should have a lower scale than the other.

Q. Which one should have the lower scale, the one earning the most net?

A. Assuming that it earned more than was a reasonable net earning; but I said if it were practical, I don't think it would be.

Q. Now then, let us assume that it would be practical, (and I am not claiming that it would be), ought not the amount of rates or revenue permitted under a schedule of rates to vary as the net earnings, so as to keep all to that which is reasonable, giving to the weak one a little higher rate, that it might have sufficient, taking from the strong one some, to bring it down to what the weak one had?

A. Of course, Mr. Butler, you are getting down to an absolutely, apparently, impracticable proposition.

Q. Well, I am assuming it to be practical.

A. Yes, I know you are, but I assume that a road which is strong, fortunately located, and has access to a field which brings to it large and profitable traffic, is entitled, because of its fortunate situation, to greater earnings; and I don't assume, (as one, at least, of the public officials,) for a moment, that the State would ever undertake to grind that down to the minimum which the courts, so far as they have held, indicate a road is entitled to. In other words, I think you have got to consider this problem or question as a whole, and to be liberal enough with the strong and the fortunate roads to be fair with the less fortunate; but I don't want to imply that a road might not be so situated and so managed that it would necessarily have to suffer.

Q. So, then, you think that, with respect to a road well located and well managed, it is entitled to more; that is, en-

titled to something for its location, its good-will, the enterprise of its founders and the vigilance and wisdom of its managers, do you not?

A. Why, I didn't mean to imply that it is entitled to more for those reasons, but it is enabled to get more, and nobody should undertake, in considering this problem as a whole, to deny it.

Q. Well, what do you think would be a reasonable rate of return upon the value of property of the best and most favorably situated railroad in the state of Minnesota, what rate per annum, net to the people who owned it?

A. Well, I don't think, Mr. Butler that you ought to ask me that question.

Q. You told me that your Commission hold that the rates made by it are reasonable and just and fair, not only to one but to all, and, Mr. Staples, unless there be something more than a mere sentimental objection, I would like to have what your judgment is as to what is, for the best road most fortunately situated and best managed, reasonable pay, measured by rate of return per annum, on the value of the property.

Mr. O'BRIEN: Well, I submit if counsel is going to insist upon that question, that the basis ought to be stated, what he means by the value of the property, whether he means the original investment, the present bonds or present stock, or the physical value of the property on the basis of reproduction, or the present value of the property, or the value of the property used for that particular traffic, or the proportion of it which is used for that. I don't think it is possible for any witness to answer a question in that general way. I haven't the least objection to the question being asked, but I think the basis ought to be established.

The MASTER: Well, if there is no objection, we will take a recess until 2 o'clock, and perhaps by that time Mr. Staples

will be able to answer unless you prefer to have him answer now.

Mr. BUTLER: Well, if he has made up his mind on the subject,—and I suppose he did when he made the rates.

WITNESS: Well, I didn't have in mind anything like what has been suggested by Mr. O'Brien.

Q. Neither did I.

A. But I have this in mind, that in answering that question I would have to consider, for my own purpose, the particular road, in what way the road was brought to its present condition, whether it was a question of bonded indebtedness or built entirely from the proceeds of stock sales or by the many other ways they do build roads.

Q. Well, assume it was bought and paid for in money at its present value.

A. Well, I can't assume that, because no company would buy a road upon any such basis, and when you say its present value I assume that you have in mind the physical value which may be proven to be its present value. I do not know, but I assume that.

Q. No, answer what you have in mind by it. These words are very common words in railway discussion. We will assume that the property was bought and paid for at its present value, what rate of return would you think ought to be allowed on that value per annum for a good road well operated and serving the public faithfully, and so on, no matter whether anybody would buy it or not, just assume they did buy it.

A. Well, I don't hesitate to say you haven't asked me a question that I hesitate more to answer than that one, Mr. Butler; I am frank about that.

Q. I am aware of its importance and of its difficulties, but if you have views on it and are willing to express them, I don't know that I care to—

Mr. O'BRIEN: I make the further objection, at this point,

may it please the Court, that that is a purely legal proposition, and the individual opinion of an individual witness can amount to nothing upon the question. It is either a question for the Court to determine or it is a question for the discretion of the legislature, and it is not competent testimony, not proper cross-examination, and not fair to this witness to ask him for his individual opinion upon a question of that sort.

Mr. BUTLER: Well, the only part of that objection that would appeal to me in any way is the last part of it.

Mr. O'BRIEN: Well, the decision doesn't rest with you, so it is rather immaterial whether it appeals to you or not.

Mr. BUTLER: Whether I withdraw the question or not, rests with me very much.

Mr. O'BRIEN: Yes, I appreciate that, Mr. Butler.

Mr. BUTLER: This witness says the Commission has made a schedule of reasonable maximum rates, and he has told us that, in order to do that, they have to determine what is a reasonable rate of return on this property; and now, it is true, I think, that it is for the Court, ultimately to say what is reasonable, but if this witness has an opinion that is lower than what the Court would say is reasonable, then it could say that the Commission proceeded on a wrong theory and manifestly they are not justified in this because they built to a theory that we will not approve, and it would save the Court and the Master a great deal of work if it should develop that way. On the other hand, if the experts upon the subject (and I consider Mr. Staples one, because he has studied this matter a great deal) are of opinion that a very considerable rate of return is right, that would be helpful to everybody who has to decide the case, and unless it does embarrass Mr. Staples to give an answer to the question as put, I would not be willing to withdraw the question out of deference to the objection.

The MASTER: It seems to me the question is proper cross-examination.

Recess until 2 o'clock P. M.

AFTERNOON SESSION.

Q. There was a question pending, Mr. Staples, when we paused at noon.

A. Perhaps you had better read it. (Question read by the Reporter.) Well, I have said, as you indicate in that question, that the purpose and intention of the Commission was to establish a schedule of reasonable maximum rates. Now, the interpretation of that word "reasonable" is, first, that the relation between the rates upon the different roads should be, as nearly as possible, reasonable and that the return or revenue which the rates would result in giving to the various companies should allow them, what the definition implies, a reasonable earning upon the value of the property necessarily employed; and I take it that that last definition is what you are seeking an answer to. Now, your question, as I recall it, is directed to one of the best managed and strongest properties. I would rather not confine my answer to a road in that position, because, as I indicated this morning, I recognize that a road occupying that position—I don't say is entitled to more, but necessarily and naturally would, earn more than perhaps might be construed to be a reasonable rate upon that road, but I say that, for this reason, it is absolutely impossible, in my judgment, to maintain a very marked difference in rates upon the different roads, where they come into competition one with another, and as, I have indicated in my testimony already, roads even though they are not paralleling, are meeting one another, at junction points which influences rates in a degree, and therefore I want to confine my answer to a road reasonably situated with reference to its command of traffic and reasonably managed; and my answer would be that, when you confine it to a road of that character, after the courts have found what is the value of the property necessarily involved or used

in the transaction of the business for which the company is organized (that is, the transportation business) I would feel that it ought to be assured of as much as seven per cent. That is, the seven per cent, of course, applies to this value, and necessarily implies that all fixed charges and other proper costs of management, operation, etc., shall first be met.

Q. Including depreciation, etc?

A. Yes, sir. Yes, sir, all other proper costs. In other words, I hold, in a general way, as I view the railroad problem, that a company is entitled to keep up its property out of the earnings; that is, that that is not a proper charge against capital. If I make myself plain I will not elaborate upon that point at all.

Q. I think you do to me. Now, Mr. Staples, to further define, expressly, terms used, is there not, properly, to be recognized a difference between a reasonable rate of return which is expressive of the legislative policy of the state or government when engaged in the matter of making rates, and the rate of return which a court recognizes in determining whether or not a given rate or schedule of rates is unconstitutional because confiscatory?

A. My judgment is that there is a difference.

Q. Your judgment is that sound policy requires that public authority in making rates ought to make rates higher (we will not say how much) than the confiscation point?

A. Yes, sir, it is.

Q. And the amount that they ought to be higher probably depends upon all considerations affecting the welfare of the carrier, of the public, and upon which public policy may properly be based?

A. I hardly know what you mean by the question of public policy; perhaps you can just clear that up a little.

Q. Well, the legislature or the commission, either state or national, in fixing rates, expresses the policy of the government

represented as to what is right and as to what is reasonable—

A. Yes.

Q. —and as to what is a reasonable rate of return; as, for example there might be conditions which would make it wise public policy to fix a schedule of rates that would allow a very high rate of return as compared with the figure which you have expressed. Now, you have told us that the policy of the State ought to be, in your opinion, to fix rates somewhat higher than the confiscation point, —

A. Yes, sir.

Q. —not at the confiscation point, but higher?

A. Yes, sir.

Q. And now, how would we determine how much higher? Isn't that question to be determined by all considerations affecting public policy—the encouragement or discouragement of railroads, the building up, or the contrary, of new territory, and the like?

A. Yes. I don't know as that fully answers your question, (it has been so long,) but perhaps I might say something that amplifies my view, and it may and may not answer your question. I was going to say this, and perhaps this is a good time to say it, I am a pretty strong advocate of public control of the transportation companies, and I hope that I am not narrow-minded about it, I hope that my views are liberal enough to recognize the rights of transportation companies, but I do not believe the control goes as far now, as it should. I have indicated what I believe to be justice to the carriers, but, as a further indication in the matter of control, I would not hold the idea, for a moment, that a line should parallel the Northern Pacific or the Great Northern through a territory where two lines are not needed and feel that the State is behind it or behind the two roads and will recognize the right of the two roads to charge such rates as will result in giving to them, I will say, what I indicated to be my opinion of a just return. That

may be getting away from your question.

Q. Well, it is not directly what I had in mind, but I am glad you stated it. It is recognized, is it not, that railway business, upon change of general business conditions, is subject to fluctuations, ups and downs, as regards tonnage and earnings both?

A. Yes, sir.

Q. And those fluctuations are often very sharp and marked and serious?

A. Yes, they are, for different periods of time.

Q. And it is very difficult, is it not, to foresee, with any reasonable degree of certainty, the coming on of a period of depression or the extent of such depression?

A. Yes, that is difficult, too. In this country, necessarily that depends very much upon the crop conditions.

Q. In a new country, sparsely settled, as Minnesota still is by comparison with older parts of this country, there is a great deal more likelihood of sharp and great fluctuations and depressions than in the older parts of the country?

A. Well, I would not like to say that I think the difference would be so very marked. There would be some, but you get into the older and well-settled portions of the country, get into the East, for example, and it seems to me that the products upon which the company rely, being largely manufactured products, fall off to the same extent, comparatively speaking, with the products upon which they rely in this country fall off, and one seems to bring on the other, a crop failure seems to bring on depression in all parts of the country.

Q. The fact of the likelihood of such fluctuations and the impossibilty of seeing into the future, as far as railroad earnings is concerned, makes it necessary, in order to be fair, that schedules made in the light of experience that is past, ought, on their face, and assuming conditions to continue as good as they have been in the recent past, to yield a higher return than would

be required were it not for the fluctuations to which reference has been made? Do you get the point of my question? If not, I will withdraw it and maybe I can make my meaning a little more distinct.

A. Well, I don't think that that question is sufficiently definite.

Q. All right, Mr. Staples. Does not the fact of uncertainty with respect to the volume of business on earnings in the railroad business make it necessary, in order to be just, to promulgate rates calculated to yield a higher return than would be the case were it not for such uncertainty?

A. Yes, I do think so.

Q. That is, it is proper to say, is it not, that, in the business of railway companies, there is an element of uncertainty of quite a degree? When we are using adjectives it is not certain we understand each other just aright, but it is quite a substantial factor bearing upon railroad investments and returns from such investments, is it not?

A. That is undoubtedly a fact.

Q. So therefore, a higher rate of return is justified than would be the case in a business not subject to such uncertainties?

A. Yes, yes, oh, yes, indeed; yes, indeed.

Q. That is to say, money seeking investment will accept a certainty at a comparatively low rate,—

A. Yes.

Q. —but, as the element of uncertainty increases, the rate demanded to procure the money for such investment also increases; they keep step, do they not?

A. Yes. And that is clearly indicated, at least to my mind, when I say they should be afforded a rate which is very much larger than the money actually costs a good substantial company in case they borrow it, or in case a man invests his money in some perfectly safe and sure investment.

Q. Like a municipal bond or perhaps a good man's notes?

A. Yes; perhaps at half the rate.

Q. Now, the circumstances and conditions of the various roads involved in this litigation are quite substantially different; there can't be any doubt about that, can there, Mr. Staples?

A. Well, Mr. Butler, there are two or three exceptions that are worthy of perhaps special consideration.

Q. Take, for example, the Chicago & Northwestern lines in Minnesota.

A. That would be one.

Q. Being part of a very strong system.

A. That would be one.

Q. But, in Minnesota, as far as local business is concerned, it is smaller as compared with some of the others, is it not?

A. Yes, sir.

Q. One of the smallest in the state?

A. Well, it is one of the small ones.

Q. One of the smallest in the state. And, now, the fact, if it be a fact, that the Chicago & Northwestern might be able to meet all its obligations to its stockholders and bondholders if it hauled the Minnesota intrastate business free of charge, of course, is not a factor to be taken into account by state authorities of Minnesota in making rates?

A. No, sir.

Q. The volume of the business within the jurisdiction of the state and the earnings upon it is to be the test?

A. Yes, sir.

Q. You consider it scarcely practicable, in view of the situation here, to maintain in this state different rates upon freight subject to the jurisdiction of the State upon the different roads? When I say different I mean substantially different.

A. Well, I think I have answered that. I can answer it again—that, to promulgate a schedule or schedules of rates

which had a marked difference, upon roads which were, in any sense, or reasonably, competitive—particularly, parallel—as a practical proposition, could not be worked out.

Q. And take the situation in Minnesota to which reference was made yesterday,—the Great Northern, for example, competes with everything in the state, practically; by reason of that fact, and other facts like that fact, it renders it a practical impossibility, does it not, to maintain in one part of the state rates very much different or substantially different from those in the other parts of the state?

A. No, I would not like to say that that is a fact. Of course, the illustration which you have pointed out is the most graphic illustration that it is possible to conceive of, but it happens that the Great Northern is the only northern road which enters that territory, and, while it has a controlling influence, particularly with reference to Minneapolis, and that would be true so far as that business is concerned, it would not be and is not true, so far as Duluth business is concerned; though it is true in a marked degree, particularly with reference to Twin City business, it is not a factor and has no influence with the rates which it might obtain in the northern part of the state, where its principal lines are located.

Q. Well, now, getting back to the question that you departed from in making your first answer this afternoon, ought there to be any difference in the rate of return on the proper value of the property devoted to Minnesota intrastate business between the various lines of the state, or should the seven per cent which you say be allowed to each of the several lines of the state? And I limit that to those in litigation, that we may not be embarrassed by the Canadian Northern or some of the very new stub-ends at the North.

A. My answer meant to imply, Mr. Butler, together with what I recall having said upon that subject this morning, that it would necessarily be recognised that some roads, because of

their peculiar location and ability to control traffic, with the traffic which was offered them, made it possible for them to earn, comparatively speaking, a very much greater or more favorable earning than another company, located where it really could not control, where it really does not control, any considerable amount of traffic without the same is had or taken away or fought for as against close competitors; and that condition together with my statement that I do not believe a new line extended through any particular territory paralleling another line could be justified or could feel that it was entitled to the protection of the State and entitled under the law of the State to earn such earnings as the Court may hold are reasonable earnings. Now, I meant to go a little further. That means that, in my mind, while, as I have said, one road is or would be enabled to earn a greater earning, another road, because of its situation, might not be able to earn what would be called a reasonable earning, and I am not clear in my mind but what that road would have to suffer.

Q. Well, now, when you spoke of the seven per cent, was it your intention to take the average of all the roads, or—

A. Oh, no, it was not.

Q. It was not to take the most favored—

A. No, indeed.

Q. —that ought to have a higher rate?

A. No, I have not said that, but I have said that it was its good fortune to be located where it could. Now, that views it not from the technical standpoint but because that would practically result.

Q. As to the road less favored, you did not intend to refer to that, when you fixed seven per cent?

A. Well, no, but I did say that I had in mind a road which was reasonably located and had reasonable control of traffic and was reasonably well managed. I do not feel, Mr. Butler, that I ought to be asked to single out different roads and give

my opinion as to their worth or their value or the way they are managed.

Q. I thought I would like to ask you, (if you were willing to answer it,) whether you think any one of the railroads in this litigation ought to be outlawed and held not entitled to any return at all on its value devoted to the business under your jurisdiction.

A. No. I can answer that, no.

Q. But, now, your expressed wish was that you did not care to undertake to fix the rate of return upon each particular road?

A. Yes; and it meant more than that, Mr. Butler. It meant that I don't like to sit here and offer testimony which is a criticism upon any road in the state.

Q. Very well, I had not intended to call for that. In your answer in which you fix seven per cent as the reasonable rate of return, I understood you to intend, and I think you clearly did intend, to assume the base to be such value as the Court would determine to be the proper base to compute the return upon?

A. Yes.

Q. You yourself did not undertake to define that?

A. No. And you have unintentionally misstated my answer; it was that the company, using the definition of the company itself, ought to be assured of seven per cent; I did not mean to intimate or indicate that it should be limited to seven per cent.

Q. Well, that seven per cent was reasonable is what you meant?

A. Yes, and that it ought to be assured. Now, that means, not this year, last year, one year—

Q. On the whole?

A. Yes, sir.

Q. Taking all the years as an average?

A. That my opinion was that it ought to be assured of that. Now "assured" does not mean that they have not got to meet just such conditions as you spoke of, possibly, but that, on the whole, they will be evened up and that the State should not (when I say the State, I refer to the governmental authority) should not contend for a minute that, because a company is getting, if seven per cent is held to be reasonable, is getting it this year, next year, because of some calamity or misfortune, it results in giving but two or three per cent, it is perfectly justified in going on and claiming that seven per cent is all that they should have the next year. In other words, that, so far as it is possible to do so, that should not be exactly a guaranty but the idea is that they are entitled to that much, that they ought to have that much; that the investment, the character of the investment—

Q. Is this thought a proper one, in justification of your opinion, that the rates should be fixed so that in good times or times of prosperity they would be able to provide for the poor times, the fat years provide for the lean years, by laying away a surplus from the good years to help them out in the bad ones?

A. Yes, it is. And, amplifying that a little, I would say that the governmental authorities should recognize the necessity and be willing to allow such increase in the rates as is reasonable to make at stated times when it is deemed necessary; but that policy should be overcome, so far as possible, by keeping the rates more uniform and more stable, because there is very serious objection to the changing of rates. First, it affects business conditions far more than the average person appreciates; second, you would increase the rates just at the time when the public could stand it the least.

Q. Yes, that was what I was about to say. That is, if the rate of return was made to depend upon a change of the rate upward coincident with the falling off of the business, it

would aggravate a very bad condition, would it not?

A. Yes; it would have, as I said, two serious effects; one would be to bring an added tax upon the public, the people served, another would be the fact that a considerable change in the rates on a great many commodities affects business very seriously. As an illustration, say, it affects a contractor, or any party, who is dependent upon his product or his supply at a given price. He may have a contract for the product at a given market and thinks he knows what the rate is, and if it goes up on him twenty-five per cent, that is something he is not prepared for.

Q. So, in other words, the rates should not be fixed so low by governmental authority that, on the average, the reasonable rate of return which you have expressed at seven per cent would not be assured notwithstanding temporary depressions, such as are reasonable to be foreseen in the light of the past?

A. Yes My answer is yes, if I understand your question.

Q. Now, does not the situation of the road most fortunately situated, by reason of its power to control business, its connection with industries and the like, enhance the value of the property?

A. Why, it enhances the value, I don't want to say of its physical properties, but it does enhance the value of the property as a security.

Q. And as an instrumentality of commerce, as a going concern, as a business investment, as an earning power, by reason of the certainty of success attending it,—the greater certainty of success as compared with the less fortunately situated property?

A. Well, I would not like to change my answer from what I gave you to the last question, Mr. Butler.

Mr. BUTLER: (To the Reporter): Just give me that answer again, Mr. Hillman.

The Reporter then read the answer as follows: "Why, it

enhances the value, I don't want to say of its physical properties, but it does enhance the value of the property as a security."

Q. And by that you mean its selling value in the market?

A. Yes, I mean that in this light, Mr. Butler; a three and one-half or four-per-cent United States government bond—which, of course, does not represent any physical property—

Q. It is a mere debt?

A. —is worth more than a 3½ or 4-per cent bond of some municipality which might be named, (some small municipalty,) as an investment. The security is regarded safer, therefore it brings a higher price, is more sought after. That would be my answer.

Q. Well, don't you think that the fact that a railroad controls a large volume of business and has proved its power to make good earnings at reasonable rates, gives to that property a value over and above the value of a similar railroad that has not such control of traffic and has not such satisfactory history as to earnings?

A. Why, it seems to me I can answer that best by illustration. I don't believe that the office building and grounds owned by the Great Northern Company would be worth five cents more owned by the weakest line in the state than they are in the hands of the Great Northern.

Q. Wouldn't it be worth less in the hands of the weakest line that didn't need it for its business?

A. Well, if it didn't need it at all, it wouldn't have it at all. Then another illustration (it may not be a good one but it seems to me it is) that the one-tenth ownership of the weakest line in the state in the Minnesota Transfer properties is not worth any more, nor any less, in the hands of that company than it would be or is in the hands of the strongest company in the state, and that it could not secure any more nor any less for it of another line desiring to seek entrance into the

Transfer and ownership in the properties there.

Q. Does not the value of a railroad property enhance with the volume of its traffic and its earning power?

A. Why, the value of its securities advances, without question, Mr. Butler.

Q. Does not every advantageous extention and connection enhance the value of the railroad?

A. A railroad is an instrumentality utilized for transportation purposes, that is the purpose of a railway corporation. Now, that is composed of many component parts, but a car will cost the Great Northern Railway, I assume, just the same as it will cost the weakest line in the state, and is worth no more after it owns the car than it is worth in the hands of the weakest line in the state, so far as the value of the property is concerned.

Q. Let us assume two railway properties, big or little, and, for the purpose of dignity of expression, let us call each, by intelligent and honest conduct, presently to cost 100 million dollars to construct; assume that one has such traffic that, upon a given schedule of rates, like the one promulgated by the State here, it could earn ten per cent per annum on that 100 millions, and the other one could not earn anything net above its taxes and operating expenses; would there be any difference in the value of the properties, Mr. Staples?

A. Well, as I have said, Mr. Butler, those properties are composed (the physical properties,) of certain items which might be classified. Now, a large item of cost is a question of equipment. The equipment in the hands of the weaker company you speak of, in the matter of its utility, is, of course, not worth as much, it does not earn as much, but it is worth just as much as in the hands of the stronger company; and I cannot conceive, nor can I reason out, that two lines can be undertaken by men of experience, ability and judgment, each

to cost 100 millions of dollars, without there is a reasonably assured field of investment.

Q. Well, I used the illustration merely to get before you a comparison that I wanted to make between a road which, by reason of its situation and connections and the trade it controls, would be an earner and one that would not, because of its situation and lack of trade and valuable connections, to find out whether or not there would not, in your opinion, be a difference in value by reason of those considerations.

A. Well, Mr. Butler, in a general way, I have been thoroughly conversant with the matter of valuing the railway properties in Minnesota, so far as the State has undertaken the work, and in undertaking the determination of the physical value of those properties (and that is only one measure of the value, I take it,) the same rule has obtained, the fact that one line was recognized or is generally recognized as a weaker line has had no influence in determining the value of those physical properties.

Q. As fixed by the State?

A. Yes. Now, I have said here, that is one measure of the value of property—

Q. Well, I was not, Mr. Staples, remotely intending to take up the soundness of the method of valuation—

A. No, I had no intention of discussing it, that was indicative of what was in my mind when you treat the question of physical properties.

Q. Suppose, for example, to get at it a little better, if we can assume as a hypothesis, that the Northern Pacific Railway were the only railway between Lake Superior and the Twin Cities and Puget Sound and controlled the business of that territory, then would not that fact give to that property, independent of the valuation of its physical parts, an enhanced value over and above what it would have if a number of strong competitors, like the Milwaukee road, now reaching the coast,

the Great Northern road, already there, the Canadian Pacific, there, and the Northwestern trying to get there? Can there be any doubt about that, Mr. Staples?

A. Well, Mr. Butler, there isn't any doubt about the question of the enhanced value of the property so far as a security is concerned. When I say security, you understand me to mean as an investment or the security that it affords the owner of the stock.

Q. In your direct examination, you read or gave testimony by the aid of a memorandum, showing the amount of grain hauled by the Northern Pacific Railway to Duluth and to Minneapolis, I think.

A. Yes.

Q. That showed all roads, did it?

A. Yes, that covered all the roads.

Q. What was the purpose of that statement? I did not quite see what it had to do with this law-suit.

A. I indicated, at that time, that my purpose in asking the statement to be made up, was to find the average loading, to indicate the increase in the average loading of cars.

Q. As bearing upon minimum, etc.?

A. Yes. That was upon all the roads.

Q. Of course there was no segregation as to the roads?

A. No, sir.

Q. There was no segregation as to local or intrastate and interstate?

A. No, sir, that comprised all the grain that our department—in fact all the grain that was delivered at Minneapolis and Duluth.

Q. And, except in so far as it shows light upon what would be a proper minimum, or what is, in fact, the average carload weight hauled, would be of no value in getting at the reasonableness of the schedules here in question, except in so far as it bears on those points?

A. Well, I would go a little further than that, Mr. Butler. It was preliminary to the introduction of the statement showing the train tonnage of cars which covered a period of nine or ten years just past.

Q. As bearing upon the train weight and car weight, and the reflection on the cost, is that the idea?

A. In a way, yes. Yes, upon the cost; that is, upon the question of the increased tonnage.

Q. The cost of doing the business?

A. Yes, sir, in a way.

The MASTER: The improved facilities?

WITNESS: Yes, sir. This was just preliminary to that statement and made to show what the actual cars do, the average weight that actual cars contain when they are delivered; and one of its purposes, of course, was to show not only the increased capacity but the carrying power of the car, by an actual example, and was confined to grain, as I said, because that was one commodity which we controlled and knew exactly what the companies were handling, did handle.

Q. That grain was from the territory tributary to the terminals at Minneapolis and at Duluth?

A. Yes,—and had no reference to state lines.

Q. At all?

A. Not in any sense of the word.

Q. Moving on both state and interstate rates?

A. Yes, sir.

Q. And, as a matter of fact, moves in disregard of state lines?

A. Yes, sir.

Q. Wholly so, does it not?

A. Yes, sir.

Q. And ought to—

A. Yes, sir.

Q. —as far as the rates are concerned. That is to say, Mr.

Staples, with respect to that grain the tonnage of which you read into the record from your memorandum, it all comes from territory tributary to these primary markets in Minnesota, Minneapolis and Duluth, and, except in so far as distance touches the question, there ought not to be any difference in rates as between state and interstate, in your opinion?

A. Well, I think, Mr. Butler, that I ought to confine my answer to what would be deemed to be a reasonable schedule of rates so far as the lines operate in Minnesota.

Q. Well, the rates ought all to be reasonable, you agree to that?

A. Yes, I do.

Q. In all the territory, whether in Minnesota or not?

A. Yes, sir.

Q. And to be reasonable, they ought to be alike; that is, they ought to disregard state lines, ought they not, to be reasonable, absolutely or by comparison, either one with the other?

A. Well, I would not care to answer that definitely either way; I don't feel like going into the question beyond what I undertake to support as a reasonable schedule of rates for Minnesota.

Q. No, but, Mr. Staples, your attention was called to schedules in other states and the interdependence, if any, between a schedule in one state as compared with schedules in other states, and the interdependence, if any, between interstate rates and state rates, in your direct examination, which makes it necessary, I think, for us, if we follow the line of your direct examination, to inquire on that subject.

A. Well, now, I will answer it in this way: If the rate in Minnesota is a reasonable rate and the extension of the rate is made upon a reasonable basis, and the conditions obtaining are practically the same beyond the state line, my answer would be yes.

Q. They ought to be the same, in the absence of conditions

imperiously ordering a change, conditions that are imperious controlling in favor of a change of method of making them or a scale of rates?

A. Of course you understand my answer is not directed to the rates which should obtain locally. I understood your question to be directed to the matter of rates upon a commodity which should be transported over the same line into the same terminal which would be interstate, and has no reference to local rates in any other state.

Q. No, I was not speaking of local rates in any other state.

A. That is what I say I understand you to mean.

Q. I understood you were speaking on interstate rates.

A. Well, I think the answer I gave, to my mind is clear, and is my answer.

Q. That is to say, that if conditions are the same as respects this grain, we will say, (by the way of illustration only,) which is interstate (to which you referred in your direct examination,) the rates ought to be the same except in so far as they are modified by mere distance, and without regard to state lines?

A. I am sure I can repeat my answer, but I could not change my views upon the question.

Q. Well, have I stated it aright? I want to be sure that we understand each other precisely on this point.

A. I think I understand you, and I undertook to restate it in my answer.

Q. The principle upon which the grain rates in Chapter 232 and the merchandise rates in your order were constructed, is a reasonable principle for the extension of those rates to added distances, is it not, in view of the circumstances?

A. It was so regarded by the Commission.

Q. And you are of that opinion now, are you not, personally?

A. Why, Mr. Butler, my opinion is that the rates them-

selves are reasonable rates.

Q. Yes. Now, is the principle upon which they are constructed, by additions to the rate for added distances, a reasonable principle, in your judgment, personally? Now, I am not calling for a determination about that, because the Commission made them and evidently thought that they were reasonable, as a Commission, and that the principle was reasonable.

A. Personally I might differ slightly from the Commission in the method of the extension.

Q. In what respect?

A. I have no quarrel with the Commission.

Q. I know; I don't want to engender anything of that kind, of course, but if, in your judgment, this principle as applied, or the figures derived by the application of the principles which were applied in making these two freight schedules here in controversy, is not right and fair and just, under the circumstances, I really think that we ought to have that statement from you.

A. I certainly would not want to express the opinion that it is not right, not fair and not just; I believe it is all of those.

Q. And reasonable?

A. Yes, reasonable.

Q. Now, let us speak of the dependence, or the lack of it, as comparing the rates in one state with the rates in another state.

The MASTER: That is, local rates?

Mr. BUTLER: Local rates.

Q. As, for instance, the schedule in Wisconsin as compared with the schedule in Minnesota and Dakota, and so on along the line of this road. I got the impression from your answer (I haven't the words of it before me) to Mr. O'Brien on this question, that you recognized some interdependence of rates in one state with rates in adjoining states, but said they were not controlling; was that about right?

A. I think so.

Q. It would not be right and fair for a carrier to maintain different rates in different states, locally, unless justified by circumstances, would it, Mr. Staples?

A. Well, a carrier within a state—

Q. I mean a carrier reaching more than one state, of course.

A. Yes—a schedule of rates maintained by any carrier within a state is necessarily more or less governed and influenced by the rates upon other lines in the state,—

Q. And upon rates in the other state, is it not more or less influenced?

A. I have not completed. I indicated, however, this morning, that they need not be the same on the different lines in the same state.

Q. No, but there ought to be a parity?

A. Oh yes, they are on a parity more or less; in other words, I think that if the state is to any reasonable degree offering the same field in the different parts they should be reasonably alike. Now, one of those lines entering one state and doing certain local business within that state, would find itself within that state, more or less governed by the same influences which might give quite a different scale of rates within that state, which might be reasonable or not, and as I said in my direct testimony, I think, they could observe and maintain those two different schedules of rates in the two different states.

Q. But ought there not to be a kind of parity (if that is a good way to express it) between them, depending upon the similarity or dissimilarity of circumstances affecting the question?

A. Why, it seems to me, if the conditions obtaining in the two states, if it could be said that they were the same,—

Q. The rates ought to be the same?

A. —that the rates ought to be substantially the same. I don't say that they would have to be, I am answering that now

from the point of view of what might be reasonable or just.

Q. Are you familiar with the statute of North Dakota which requires substantially that very thing, to-wit, that the rates in North Dakota of any carrier be substantially the same as that of any other state, under similar circumstances?

A. No, I am not; but if that is the statute, they don't observe it. I never knew of the statute, however.

Q. There is a statute on the subject, and I think I have with accuracy stated it, and I will call it to the Court's attention.

A. For illustration, we have distributing rates in Minnesota, and they have a higher scale (and, I think, a considerably higher scale,) of distributing rates in North Dakota. Our rates were put in on November 15, 1906, and the rates in North Dakota were in several years before and are still in to-day and were not changed when those in Minnesota were changed.

Q. Perhaps density of population might be a circumstance to be taken into account?

A. I am not undertaking to review that question except to indicate that, so far as the law was concerned, unless that is a factor,—of course I think circumstances are a factor.

Q. Now, reference was made, in your direct examination to the distance tariffs in Iowa, in which you stated they were lower than in Minnesota. Circumstances are different in Iowa, are they not?

A. Well, Mr. Butler, in my direct testimony I was particularly careful not to give any testimony indicating the comparison except to show the difference on the different roads, on a percentage basis, which obtained in Minnesota, using the Iowa rate as the basis for comparison, but there was no intention on my part to compare the Minnesota rate with the Iowa rate.

Q. You do not think them properly comparable, do you?

A. Well, I wouldn't like to say that. I would feel this way, that, before I should answer that in the affirmative, it would

be my duty to spend a good deal of time in Iowa and learn the conditions obtaining there; in other words, I think that those are not only proper to be considered, but are absolutely necessary before a comparison is fair.

Q. And, obviously, on the face of the thing itself, there is this difference, that Minnesota has, as respects both the classes and the commodities, primary markets at the Twin Cities and at Duluth, while Iowa has no corresponding controlling primary market? I don't mean the little towns, but I mean the big controlling factors.

A. Well, Iowa is rather famous for having a considerable number of what they call good markets, but it is true that it has no large terminal markets.

Q. No grain market?

A. No, oh, no; but it is has a stock market, in the northwest corner—

Q. About ten per cent of the stock at Sioux City does not come from Iowa, does it, it all moves in there from the West, and that east of Sioux City moves to Chicago, does it not?

A. I was about to say that I did not consider that influenced the stock situation in the state of Iowa to any great extent.

Q. The scale of rates in Iowa is lower than in Wisconsin, Minnesota, North Dakota, South Dakota, Nebraska, Missouri, Kansas, or any state that touches Iowa, isn't it, and has been ever since their statutory distance tariffs?

A. The schedule of rates in Iowa is perhaps a peculiar one; in some respects it is a low schedule, seemingly so, and in others a high schedule. I think Illinois, when you take the actual rates which obtain, will be found to be quite a little lower than in Iowa.

Q. All the other states I have mentioned are higher?

A. I think they are.

Q. Wisconsin is very much higher than Minnesota, is it not, their distance tariffs, now in effect there, are higher than

the distance tariffs here in controversy?

A. Well, I am not conversant enough with that, of recent date, to answer, Mr. Butler.

Q. You haven't made any examination of the tariffs—

A. No, sir.

Q. —local to Wisconsin to find that out?

A. No, sir.

Q. The mere difference between the schedule in one state, as compared with the schedule of another state, does not establish a want of interdependence between the rates, does it?

A. No, but I think it can very properly be pointed to as one of the factors.

Q. But there might be a relation of rates that was of great influence and controlling, and still the rates themselves might differ; I am now speaking of rates in one state as compared with rates in another.

A. No, I think the illustrations of the rates in Minnesota and those in Iowa have made it clear (at least have to me,) that the rates which obtain in one state locally have very little influence upon the rates in an adjoining state. They may have some, but it is not marked.

Q. It depends on conditions a great deal perhaps?

A. Well, yes.

Q. Now, let us speak of the interdependence between a state rate and an interstate rate. In your cross-examination you pointed out an instance with respect to livestock, where the livestock reductions from points in Minnesota to the market in Minnesota, at South St. Paul, required corresponding reductions to the markets at Chicago and elsewhere. That is merely illustrative, and it is a truth that extends to practically everything, isn't it?

A. Well, you have reversed my statement, Mr. Butler.

Q. Well, that is true, with respect to stock,—I did it inadvertently—that the reduction of the interstate rates made it

necessary, in order to protect Minneapolis, to reduce the state rates. That was your statement, wasn't it?

A. Yes; yes, that was the influence.

Q. The converse of that would be true, would it not: the reduction of the state rates would make it necessary to reduce the interstate rates in justice to the markets outside of the state; that is, in other words, there is a kind of relation or parity that must be observed and maintained or somebody will be discriminated against, as to the choice of markets, or markets as to the flow of the traffic?

A. That might be true as to certain portions of the state.

Q. Yes, I am now speaking of the southern portion with respect to stock.

A. Yes, it would be from the very southern portion, too.

Q. Now, in the southern portion of the state Chicago is a strong competitor for the products of the soil, is it not, with the markets of Minnesota, namely, Minneapolis and Duluth, if Duluth is a factor in the southern part of the state?

A. Yes, it is.

Q. It is also a strong competitor in distributing merchandise under the Western Classification rates?

A. Naturally, it controls a certain portion of southern Minnesota almost absolutely.

Q. Now, as to the products of the soil, there is a recognised relation in rates from points in southern Minnesota to Minneapolis and from points in southern Minnesota to Chicago, that has grown up as the markets have grown up and as the railroads have grown up, a result of business and commercial conditions, competition between railroads, producers, carriers and consumers?

A. That is somewhat true, Mr. Butler, but, in the natural course of business, certain territory is recognized as the territory that is tributary to certain terminals, and it is suprising what influences it takes to change those conditions; and the

question of rates (while I don't want to indicate that that hasn't anything to do with it) is not as important as it appears on its face. Producers who are used to a certain market, except those who are right on the dividing line and who seem to act back and forth between two markets which are on that line, are prone to continue to patronize the market which they have seemed to grow up with and adopt as their natural market.

Q. What is it that defines the boundary line of supremacy of one market as compared with another?

A. Well, I might say, largely the length of the line; at least, that is a pretty large factor.

Q. That is competition between carriers, isn't it?

A. No; the same carrier which reaches Minneapolis frequently does everything it can to do the business with Chicago.

Q. Well, competition between routes, then?

A. No, I mean in the sense that the longer the line, the further it can haul the business, the more it seems to seek that point.

Q. The Milwaukee road has a line from Pipestone to Chicago, hasn't it?

A. Yes.

Q. Now, if there is any disturbance of parity between the Minneapolis rate from Pipestone and the Chicago rate from Pipestone, the tendency will be to divert the traffic accordingly as the advantage is, will it not?

A. You are confining your question to the matter of the rate?

Q. Yes, if there is a disturbance of parity between the rates.

A. That would depend very much, Mr. Butler, upon the shipper, the man; he may be willing to continue to go to Chicago though the rate to Minneapolis had been somewhat reduced and the parity which had obtained had been changed.

Q. There wouldn't be any such tendency, then?

A. No, I don't want to indicate that, but I do want to make it pretty plain that the desire of the shipper to enter a certain market is a matter of great influence in determining which way the traffic will move.

Q. The price of the wheat is fixed, usually, by the price of export wheat, the cheapest way to get to the seaboard, isn't it?

A. Well, in a large sense, yes.

Q. And if it is cheaper to go by Chicago, it will go by Chicago rather than by Minneapolis, won't it? and wheat is very sensitive about that, isn't it?

A. Yes.

Q. Wheat and its product?

A. That is a good deal true; and, at the same time, it frequently occurs that we are receiving, say, from three to five hundred cars of grain a day at Duluth, right along, and average that, and it is possible that that will change within three or four days and that while we have been receiving the same amount at Minneapolis, we may receive fifty per cent of that which has been shipped to Duluth at Minneapolis, and that may remain so for a period of a month, maybe longer.

Q. Mr. Staples, has not the change of interstate rates from points in Minnesota to Chicago or Milwaukee, always been followed by some modification of the local rates to the primary markets in Minnesota, and, *vice versa*, have not the reductions in Minnesota, always necessitated what the railroad men call a "checking in" of interstate rates and an adjustment on that basis, and is it not true that, as a matter of fact, the interstate rates have customarily come down following state reductions generally, in Minnesota, and hasn't the state reductions in Minnesota been the cause of the reductions, such as there have been, in interstate rates? Now, isn't that the general truth of it, without getting down to detail or degree?

A Why, I made the statement, once, Mr. Butler, that it

was a pretty safe guide to say that reductions which had been had in rates were largely the result of efforts made by the state, but that did not mean entirely that the reductions which had been had in the state resulted in reductions in interstate rates.

Q. I didn't ask you what was the cause, Mr. Staples, or the legal or necessary effect, but I have asked for the fact, haven't the state reductions in Minnesota been customarily and generally followed by interstate rate reductions to a more or less extent?

A. Yes, and generally less. Now, when the rates were reduced upon grain and coal in Minnesota (and I refer to the voluntary reductions made by the northern roads) those reductions influenced interstate rates but very little.

Q. Well, now, in your speech (to which you have referred, I think, in your last answer,) you used this language, did you not, this speech before the Association of Commissioners, in 1907, since this lawsuit was commenced, "There have been many general rate reductions in different states followed by reductions on interstate traffic, and, so far as we know, these have all been brought about by the affirmative action of the state authorities. So far as we are advised, we know of no general reductions due to any action by the federal authorities"? Now, isn't that a fair, candid and truthful statement?

A. Yes.

Q. Of the situation?

A. I think it is the truth.

Q. That is a generalization of it, without going into detail, isn't it?

A. Yes, sir.

Q. And you do know, do you not, Mr. Staples, that rate reductions in Minnesota have been followed by a checking-in of the interstate rates by the rate-clerks of all the railroads involved, involving more or less modification? That is well

known, isn't it, as a matter of practice?

A. Yes,—Well, Mr. Butler, I want you to appreciate that I haven't the slightest wish to conceal the actual facts, not the slightest wish, but I don't want to magnify the facts, either—

Q. No.

A. —and your statement is, as you say, there have been more or less such changes followed in interstate rates. That statement is true. Now, that don't mean that those changes were forced in all cases. When I say forced, I mean that the roads felt it absolutely necessary to make them, but in undertaking to do (what I assume to be) justice by the carrier to the community served, they felt that, in certain cases, certain reductions should be made; but you go South on all the southern lines, and you do not find that, when they adopted our merchandise schedule they felt it necessary to go beyond the state line to any extent in the reductions, but the northern lines did carry those reductions a certain distance into North Dakota.

Q. Now, the price of merchandise, or articles under that, isn't so responsive to the freight rate as the commodities?

A. Well, of the higher classes that would be true.

Q. Now, you believe, do you not, in the principle, in rate-making, that the greater the distance the lower the rate per ton per mile should be?

A. No, I do not.

Q. You do not believe in that?

A. Not carried out to its finality, no, sir.

Q. Subject to certain exceptions, you do not believe in that?

A. I do not believe in it.

Q. You do not believe in decreasing the addition for the haul as the distance increases?

A. Well, of course, you are getting back now into a subject which I hoped we had escaped a few moments ago, Mr. Butler. You are getting right back.

Q. Well, I want to find out whether that principle receives your endorsement. Is it not laid down by all rate-making authorities, national, railroad and everybody else, that, other things being equal, the greater the haul the lower the rate per ton per mile should be, and isn't that the conceded truth of the situation?

A. I do not think so, and I do not accept it.

Q. Now, you have noted how I stated it?

A. Yes.

Q. Other things being equal—

A. Yes.

Q. —as the distance increases, the rate per ton per mile for the whole distance,—not for the last mile, but for the whole haul,—should not decrease. You think that is not a fair statement of the general rule, Mr. Staples, or the sound rule, or the truth?

A. Well, I think, Mr. Butler,—I am glad you put that the second time—

Q. I wanted to be sure, because that is in violation of everything I understand to be recognized.

A. I don't want to change my answer, but your second statement prompts me to think a little further as to the result or the consequence of my own idea, and it would practically result in that; that is, measuring the distance from the point of origin.

Q. Yes, sir; that is what I say, measuring the whole route.

A. Yes.

Q. Conditions remaining substantially the same, the rate per ton per mile for the whole route, (that is, the average rate per ton per mile for the route,) should always decrease, should it not?

A. Yes, I think that would be the effect of almost any reasonable tariff, constructed upon any plan.

Q. Yes, sir; and a tariff which involves the necessity of vio-

lating that principle violates reason, does it not?

A. Well, of course, you must consider the tariff as a whole. We recognize—

Q. I do. I am speaking now of the rate as a whole.

A. The rate as a whole, and eliminating those conditions which make it necessary to perhaps carry the same rate—

Q. Except in the blanketing points.

A. Yes.

Q. And, even so, it remains true on the blanket, because, if you come to a flat place, the average rate declines as you add the distance?

A. I understand you, and I don't think I should want to change my answer. After reflection, my answer at present is yes.

Q. It violates reason. Now, to illustrate that, so that there may be no misunderstanding about it, compare the rate from Twin Cities to St. Cloud with the rate from Twin Cities to Detroit; the average rate per ton per mile from Twin Cities to Detroit should be lower than the average rate per ton per mile from the Twin Cities to St. Cloud?

A. Yes, sir.

Q. That illustrates the general truth, does it not?

A. Yes, sir.

Q. And the blanketing made necessary by the disregard of distance still complies with that principle of rate-making?

A. Yes, in a lesser degree, it would be true.

Q. But it still recognizes it?

A. Yes.

Q. Now, to charge a rate from the Twin Cities to Detroit which averages a higher rate per ton per mile than from Twin Cities to St. Cloud, would violate reason, would it not?

A. Unless there were some conditions that influenced it, I think any authority would recognize that as an unreasonable rate.

Q. And, so, if you charge a higher rate per ton per mile from Twin Cities to Helena, on the various classes of merchandise, than the rate that you charge from Twin Cities to Moorhead on the same classes of merchandise, you violate reason in a greater degree than in the other instances I have mentioned within the state, do you not?

A. Yes, I think you do.

Q. Now, you have observed, in this exhibit introduced here, by Mr. Baird, (I think Ex. 49,) have you not, that the application of the maximum rates of the order of September 6th, 1906, produces a lower average rate per ton per mile from Twin Cities to Moorhead than the existing average rate per ton per mile to points far west in Dakota and Montana, and, as respects some of the classes, as far west as Spokane?

A. No, I did not understand that that is the case, Mr. Butler; I do not so understand it.

Q. Well, assume it to be so.

Mr. O'BRIEN: Well, Mr. Butler, that is not the case; you are mistaken in that.

Mr. BUTLER: I am not, I think, but assume that we claim that to be the fact.

Mr. O'BRIEN: Well, it seems to me that the witness should not be asked to assume that an exhibit that is in evidence here shows something—

Mr. BUTLER: No, I will withdraw the assumption that the exhibit shows—I will withdraw the reference to that.

Mr. O'BRIEN: —which I insist it does not and which the witness says he does not understand.

Mr. BUTLER: Well, I will withdraw that question.

Q. And I will ask you to assume it to be the fact, independent of what is in that exhibit, that the rate per ton per mile allowed by the Commission on each of the classes in a movement from the Twin Cities to Moorhead is a lower rate per ton per mile than that applied by the railroads immediately before the

promulgation of this order to points as far west as the Missouri river and the Rocky mountains, and ask you whether or not the maintenance of the two does not, in your opinion, violate reason and make an unreasonable condition of affairs.

A. Why, I should answer that question affirmatively, but that don't imply that I would regard the Moorhead rate as an unreasonable rate.

Q. No, sir, I am not asking you that at all. Every rate for the lesser distance ought to yield an average rate per ton per mile higher than any other rate for a greater distance including the lesser; isn't that true?

A. That is a general principle which is recognized as governing.

Q. And in making rates, neither the legislature nor your Commission has made any rate which, on its own distances, violates that principle, has it,—not intended to do so?

A. I don't think they do.

Q. You know they don't, don't you, that the greater the distance the less the rate per ton per mile? That is the idea of the tariff, one extending to five hundred miles and the other extending to four hundred?

A. Yes, sir.

Q. Now, Mr. Staples, do you think it reasonable that there should be maintained such a difference in rates from the western Minnesota points to the primary markets of Twin Cities and Duluth, and the eastern Dakota points to those places, as would result from applying the rates prescribed by the State in both schedules here in question and for the railroads to adhere to the old interstate rates?

A. Well, Mr. Butler, I do not think that I am called upon to question the reasonableness or the unreasonableness of the rates which obtain from North Dakota points into the terminals of Minnesota.

Q. I am not asking you to do so; I am asking you to tell me

whether you think it reasonable to maintain both.

A. I indicated by my answer, a while ago, it was my judgment, if the rates which obtain in Minnesota are reasonable rates to the state line, and the application of the extension of those rates is a reasonable method, to the same traffic beyond the line, and the conditions are substantially the same, that it would be reasonable to give them the benefit—

Q. To bring down the interstate rates to correspond?

A. Well—

Q. Isn't that it?

A. Perhaps that would be—I don't know whether it would bring them down or not, but—

Q. Well, if necessary, to so adjust them to make them correspond?

A. I have indicated that that would be my judgment. Now, as to whether the interstate rates are reasonable or not I haven't any—

Q. No, but you know it would be unreasonable to maintain such a difference, do you not, and to apply a different principle merely upon passing a state line and make the greater distance carried the higher rate per ton per mile on the average?

A. My answer yesterday with reference to the conditions obtaining at Superior and Duluth, it seems to me, covers that question.

Q. Well, I would like to have it as expressly covered now, Mr. Staples.

Adjourned until Wednesday, March 3, at 10 o'clock, A. M.

FEDERAL BUILDING, St. Paul, Minn., March 3, 1909. Hearing resumed at 10 o'clock A. M.

CHARLES F. STAPLES,
recalled for further cross-examination, testified:

By Mr. BUTLER:

Q. Mr. Staples, Mr. Allan Flinn, the rate-clerk of your Commission, when upon the stand, produced an exhibit which was offered in evidence, marked Ex. YY. Are you familiar with it?

A. I think not. I was not present when Mr. Flinn testified, and while I had a voice in directing him in the preparation of some exhibits, I never saw them after they were prepared.

Q. This exhibit is entitled "Statement showing the first-class rates, old and present, from St. Paul to stations on various roads in Minnesota and Iowa." The towns selected are near the border line on the lines of the Omaha, the Great Northern, the M. & St. L., the St. Paul, and the Rock Island, showing where the interstate rate has been changed since the application of the rates in the order of September 6, 1906, and where such interstate rates have not been changed, and from the exhibit itself the difference in rates between the border towns is apparent, both as they were before the application of the rates in the order of September 6th and as they became afterwards by reason of the application of that order. At the time he was upon the stand, he undertook to furnish for us a statement, on similar lines with respect to the same points, showing the old and new rates on wheat, coarse grain, lumber, cattle, hogs, hard and soft coal, to the towns nearest the boundary line in Minnesota and the towns nearest the boundary line in Iowa and in South Dakota. I think Ex. YY relates to South Dakota also, in part, though it is not so

stated in the caption. Now, I call your attention to the statement furnished us by Mr. Flinn entitled, "Statement showing rates on grain, lumber and livestock under the old theories under Chapter 232 General Laws 1907 and the loss entailed by the rates under Chapter 232," and also a similar statement as respects hard and soft coal from Duluth to the same points. On the Omaha Railway it appears that Elmore is the point in Minnesota nearest the Iowa line and Ledyard is the next point reached after crossing the Iowa line. You understand the plan of the statement, do you?

A. I understand it.

Q. I call your attention to the losses on wheat, assuming the average carload to be 50,000 pounds, and the haul to the Twin Cities. At Elmore it would be $4.50 per car; at Bigelow, $8 per car; Ash Creek, $6 per car; Beaver Creek, $6 per car; Taopi, on the Great Western road, $14.50 per car; another branch of the same road, Lyle, $14.50; Leroy, $11.50; Twin Lakes, on the Minneapolis & St. Louis, $8; Marietta, $2.50; Dunnell, $11; on the line of the St. Paul company, Reno, $19.50; Dresbach, $21; Leroy, $18; Lyle, $14; Airlie, $12; Wheaton, $8; on the Rock Island, Gordonsville, $11.50; Bricelyn, $13; Round Lake, $15.50; Ellsworth, $13.50; Cresson, $5.50. The towns named are, in each instance, the nearest to the state boundary line, are they not, Mr. Staples?

A. Yes, sir.

Q. And the loss shown is the difference between the proposed maximum rates in Chapter 232 and existing rates?

A. According to the statement that is true.

Q. And, therefore, the application of Chapter 232 would increase the difference between the rate to the Minnesota points and the nearest point outside of the state, by an addition of the figures given which indicate the amount of loss; as, for example, if the difference between the rate on a carload of wheat of 50,000 pounds from Elmore to Minneapolis, and

from Ledyard to Minneapolis, is now $3, on the application of the proposed rates it would be $7.50—$4.50 more; that is, that amount of loss would be added to the present difference, unless the interstate rate was changed?

Mr. O'BRIEN: Well, call that the amount of reduction.

Mr. BUTLER: Very good; I meant the same thing.

Q. That may be called reduction?

A. That is true.

Q. That would also be true as respects coarse grain, shown on this statement?

A. Yes, sir.

Q. And the amount of reduction from Elmore to Minneapolis on a carload of coarse grain, of 40,000 pounds, would be $5.60?

A. Yes, sir.

Q. Bigelow $8.80, Ash Creek $7.60, Beaver Creek $9.60, Taopi $10, Lyle $10, Leroy $7.60, Twin Lakes $6.40, Marietta $6.80, Dunnell $8.80, Reno $19.60, Dresbach $14.80, Leroy $12.40, Lyle $11.20, Airlie $14.40, Wheaton $11.20. Beginning with Taopi, the points are on the line of the St. Paul company to Twin Lakes; beginning with Twin Lakes, on the line of the St. Louis company; beginning with Reno, on another branch of the St. Paul company; beginning with Gordonsville, on the line of the Rock Island company; that is right, is it not?

A. Yes.

Q. The amount of difference between the border stations would be increased by the amount of the loss on coarse grain as indicated?

A. Yes, sir.

Q. And on lumber, on the Omaha, Elmore, a carload of 30,000 pounds, 30 cents; Bigelow, $6.60; Sibley, $8.40; Rock Rapids, $8.40. On the line of the St. Paul, Taopi, $2.40; Lyle, $2.10. On the line of the St. Louis, Twin Lakes, $1.20;

Marietta, $10.80; Dunnell, $8.70; Reno, on another branch of the St. Paul, 30 cents; no change at Dresbach. At Dresbach, if the rates were applied as specified in Chapter 232, there would be an increase in the carload rate of $7.50, but Section 7 of Chapter 232 prevents the raise, so that may be read as no change. Lyle, $1.80; Airlie, $5.40; Wheaton, $10.80. On the Rock Island, Gordonsville, $1.80; Bricelyn, $1.20; Round Lake, $1.80; Ellsworth, $6.30; Cresson, $1.50. That is correct, is it not?

A. Yes, sir

Q. Now, as respects cattle and hogs, there would be no change in most of the places by reason of the effect of Section 7?

A. Well, yes, taken all together, that would be true.

Q. That is, cattle and hogs?

A. Yes, taken all together.

Q. Let us specify. As to hogs, there would be no change in any place except at Dresbach, which would be 48 cents, and, at Bricelyn, 16 cents?

A. Yes, that is right.

Q. And, as respects cattle, slight [illegible]nges in some places and no change in about half the places?

A. Yes.

Mr. O'BRIEN: I think, where you are calling attention to those where the rates allowed by the schedule are higher, it ought to be stated, rather than "no change."

Mr. BUTLER: Very well; I was afraid I was taking more time than I ought to. I have not the slightest objection to doing that.

WITNESS: I supposed that would come out later.

Q. To be more specific, as respects cattle, the average carload weight of 20,000 pounds, on the Omaha road, the reduction would be $2.20 per car; Bigelow, $2.20, Rock Rapids, $2.40; Beaver Creek, $2.40. On the Milwaukee, Taopi, in-

crease, 80 cents; Lyle, increase, 80 cents; Leroy, increase, $4.40. On the St. Louis, Twin Lakes, increase, $2.60; Marietta, reduction, $1.80; Dunnell, reduction, $2.80. On another branch of the St. Paul, Reno, reduction, $2.20; Dresbach, reduction, $4; Leroy, increase, $2.60; Lyle, increase, $1.20; Airlie, increase, 20 cents. On the Rock Island, Gordonsville, reduction, 80 cents; Bricelyn, reduction, $3.40; Ellsworth, reduction, 80 cents; Cresson, reduction, $1. As respects hogs, average carload weight of 16,000 pounds to St. Paul, Elmore, increase, $1.12; Bigelow, increase, $1.44; Rock Rapids, increase, $1.28; Beaver Creek, increase, $1.28. On the St. Paul line Taopi, increase, $3.04; Lyle, the same; Leroy, $6.24. On the St. Louis, Twin Cities, increase, $4.74; Marietta, increase, $1.92; Dunnell, increase, 64 cents. Another branch of the St. Paul, Reno, increase, $1.12; Dresbach, reduction, 48 cents; Leroy, increase, $4.54; Lyle, increase, $3.68; Airlie, increase, $3.04; Wheaton, reduction, $3.84. On the Rock Island, Gordonsville, increase, $2.08; Bricelyn, reduction, 16 cents; Round Lake, increase, $3.36; Ellsworth, increase, $2.88; Cresson, increase, $2.88. That is correct, is it not?

A. Yes, sir.

Q. And those places, contained in my question, as read from the exhibit as "increases" would, as a matter of fact, under the provision contained in Section 7 of the act, remain unchanged?

A. Except by further legislation, yes, sir.

Q. The legislature could change its mind and the Commission could change it?

A. Yes, sir.

Q. As respects hard coal and soft coal, I call your attention to the additional statement furnished by Mr. Flinn, movement of such coal from Duluth; and, assuming the average carload weight to be 50,000 pounds, on the Omaha, hard coal reduction, $23.25 per car to Elmore; to Bigelow, $22; Ash

Creek, $20.25; Beaver Creek, $21.50. Great Western, Taopi, $29.75; Lyle, $23.50; Leroy, $26.50. On the St. Louis, Twin Lakes, $24.75; Marietta, $20.75; Dunnell, $23.25. On the St. Paul, Reno, $27; Dresbach, $28.75; Lyle, $23.25; Airlie, $12; Wheaton, $20.50 On the Rock Island, Gordonsville, $23.25; Bricelyn, $24.75; Round Lake, $16.75; Ellsworth, $14.50; Cresson, $18;—all reductions?

A. Those rates are not right, Mr. Butler. The truth is that Mr. Flinn has so much to do that he directs this work.

Q. Upon inspection of this hard-and-soft-coal statement you are not inclined to feel satisfied that a mistake has not been made in its preparation?

A. I believe a mistake has been made, that it does not show the facts.

Q. I will withdraw the question.

A. As to the other, I have made no examination upon those points; as I said, however, I was going by the figures on the statement, I know nothing about the statements personally.

Q. You recognize them as having come from your office, presumably?

A. Oh, yes, I do, I recognize this handwriting.

Q. Is that Mr. Flinn's or some of his assistants'?

A. The heading of this statement, showing the difference in the coarse grain and cattle and lumber rates, is evidently written by Mr. Flinn, but the statement itself is not in Mr. Flinn's handwriting, and the statement upon hard and soft coal is not in Mr. Flinn's handwriting at all.

Q. But it is in one of his clerk's handwriting?

A. No doubt the statement is made in our office.

Mr. BUTLER: I will withdraw the question as respects hard coal until we may verify that situation.

Q. Your attention has been called to the difference arising between the rates from interstate points outside of Min-

nesota next to its border and the points within Minnesota next to its boundary as shown on Ex. YY, which was offered in evidence in connection with Mr. Flinn's examination and relates to the classes?

A. The first class rate?

Q. Yes, the first class rate, and the classes being in relation as far as the new rate is concerned, the difference would be apparent to all of them; your attention has been called to those differences?

A. Yes, sir.

Q. And your attention has also been called to the differences arising on the western border of the state in North Dakota, between the interstate rates from the points just over the Minnesota line, and from the points in Minnesota nearest to it, both as respects the classes and the commodities?

A. Yes, sir.

Q. Now, Mr. Staples, I want to ask you as respecting such differences—by that I mean the differences so far as disclosed—all around the boundary line of the state, between rates from two points, one on each side of the boundary, and ask you whether or not you do not think that the difference is too great to be maintained fairly and justly.

A. Why, in answering that question, I would necessarily have to repeat what I have said, two or three times, and that is to this effect: that, viewing the question from the standpoint that the rate in Minnesota is regarded as a reasonable rate, any station just across the line could not, in my opinion, be required to pay a very great difference between the rate to the Minnesota point and the point directly across the line and consider that the rate or the relation between the two rates would be reasonable. I make that statement upon the assumption that the conditions just across the line must, necessarily be, and are, to any point that I can recall, practically the same. There is nothing that would influence the

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question so as to justify a considerably higher rate just across the line to any point. Unless some particular point should be called to my mind, I cannot think of any. And I would like to say, just at this juncture, that upon this phase of the question, in my testimony yesterday afternoon, I feel, after considering or thinking it over, last night, that I made a mistake—perhaps it was due to getting somewhat confused, not by the counsel, but in my own thoughts—upon the question of the extension, any theory of extension of rates, after you leave the state line. I recall having answered Mr. Butler, (as I remember my answer,) two or three times, that the farther you carry the tariff or continue the schedule, necessarily the rate per ton per mile must be reduced; and after two or three questions by him upon that particular question, as I recall it, I reconsidered, answering first that it need not necessarily be reduced, and, second, holding that it would, necessarily, follow. Now, in those answers I had more in thought the different tariffs which I have read and to which Mr. Butler perhaps referred indefinitely and in a general way, and all those tariffs are for short mileages, (I refer now to the different state tariffs covering the so-called maximum schedules of rates) and they are, so far as I can recall, built upon that plan; but I did not take the broad view of the question that I should have taken and considered the tariffs themselves as they are actually applied to the long-distance-interstate traffic. And I would not want to present the view of the case, as I look at it, that it is necessary, in order to maintain or to establish a reasonable system of rates, that the rate per ton per mile for the longer distance (the long distances) should necessarily have to decrease the farther you go, for I do not think so; and I have made quite a few computations and tabulations upon that question. Now, in this connection, I also feel that, in justice to myself, and particularly to Mr. Butler, I ought to withdraw or reconsider any objections that I offered

yesterday to answering Mr. Butler when he asked for my personal view upon the question of what would be considered a fair way to extend tariffs; and I do that, in this connection, at this time, because I can see that the same questions, in one way or another, are going to be reviewed, and I think that Mr. Butler is entitled to have my opinions, (and they are my own opinions,) and I certainly have no hesitancy in giving them. I feel differently about that from what I did yesterday; I thought the matter all over last night and I don't think it was hardly fair to Mr. Butler that I should object to giving him my views upon that question, if he desires them.

Q. Well, of course, much that you have now said is not responsive to the question, Mr Staples.

A. Why, I appreciate that, but I took that opportunity, Mr. Butler.

Q. I assure you that, at a convenient time, I will give you an opportunity to say all you want to about the matter that you have taken up.

A. I have no desire to enlarge upon it further than you wish.

Q. But my question related to the differences resulting from the application of the state-made rates to state points and the maintenance of the old rates to points without the state. Your answer agreed with the claim implied in my question, except that you said "very great differences." Now, I purposely called your attention to all of the differences on the south and on the west that would so arise, and put them at you in a bunch rather than in detail, to save time, and I want to ask you if the differences so disclosed would not, in your opinion, be altogether too great to be fairly or properly maintained.

A. Well, do you refer now, Mr. Butler, to the figures which you have read from the differences in grain rates, lumber rates and stock rates?

Q I refer, first, to the differences disclosed by Ex. YY—

A. I haven't looked at that.

Q. —which we called Mr. Flinn's attention to, in detail; and also to the differences disclosed this morning in your examination, as respects grain, wheat and coarse grain of both sorts. In the lumber and livestock the differences are not so great so I will omit them from my question. I intended to call your attention to the differences which you have heretofore had your attention called to and know about, resulting by the application of the class rates to points near the western boundary, and also to the commodity rates if they were to be applied, and the present interstate rates maintained, and I group them together to ask you whether or not such differences, for the distances between those points, one on each side of the state line, were not altogether too great to be maintained, in fairness to the public. Of course I included coal in the rates referred to in Chapter 232, and I wanted, if I could, to get your answer generally to that subject, without taking it up in detail, because it will be laborious to do so. Do you catch it?

A. Yes, I understand it.

Q. In the examination of Mr. Flinn, the figures, the old and new differences, were made apparent in the record in his cross-examination, though it doesn't appear here. Now, you see here is Elmore and Ledyard, the distance is seven miles, the old difference is 11 cents.

A. Why, my answer, Mr. Butler, to the general question would be that, in most cases, to leave the rate just across the border at what it formerly was, would leave the relationship, to my mind, unreasonable.

Q. Excessive and unfair in every respect, wouldn't it?

A. Yes. Now, that is on the assumption that there is—

Q. That the state rates were enforced, and the interstate

rates existing before the change of the state rates, were maintained?

A Yes; and, of course, on the further assumption that there is some traffic, that there is somebody affected by this.

Q. Is, or will be?

A. Yes.

Q. These rates are for future application?

A. Not *these*.

Q. Well, they are now in?

A. These are.

Q. So that, in all instances where traffic moves or will move, in order that justice be done, the interstate rates would have to be materially reduced, so as to keep the relation the same as it is within the state, under like conditions for like distances, would it not?

A. Yes, sir, to those points, that would be true.

Q. Certainly. To all those interstate points just beyond the border, is what I have limited the question to so far. And you would say, would you not, that the maintenance of the interstate rates as they were, as respects the classes, and as they are now, after the enforcement of the state-made rates on the classes and the commodities, would amount to unjust discrimination by reason of those differences to which we have referred? That is, a discrimination is a difference, it may be just or unjust. Now, I want to ask you whether or not these differences are not so great, under the circumstances, as to be unjust and unfair discriminations.

A. Assuming the conditions to be what I have outlined, two or three times, in reference—

Q. To be what they are?

A. To be what they are, yes.

Q. And the only way to avoid that discrimination, would be to reduce the differences by raising the state rate or reducing the interstate rate; isn't that true?

A. I think that is true.

Q. The existence of the state line, in view of your repeated statement that the conditions are the same on both sides in Iowa and the Dakotas, isn't any justification at all for any greater difference than should be maintained within the state for like distances, is it?

A. Well, I hardly see just the application of the "like distances," Mr. Butler.

Q. Well, of course, the different distances between the nearest towns on one or each side of the state line, is two or three miles, in many instances, and on the west one mile, and, in some instances, six or seven or eight or nine.

A. With that explanation I would say yes.

Q. Of course there might be some difference justified where there is a difference of a few miles between the stations, but no greater difference than if both points were in Minnesota?

A. I think not.

Q. Now, as respects interdependence of rates, interstate and state rates, in the passenger business, there is a very decided interdependence, practically absolute, isn't there?

A. Yes, I think that the passenger rate question presents a very different question for treatment than the freight rate. What I mean by that is, the possible means of manipulation is very much greater than in the cases of freight.

Q. Well, by "manipulation" you mean the power of the public to take advantage of the local law as respects interstate travel?

A. That is what I meant when I said manipulation, it is in the hands of the individual, to a large extent.

Q. Now, there has been no recent reduction of interstate passenger rates by any national authority, has there?

A. None to my knowledge; I haven't any knowledge of any, Mr. Butler.

Q. Prior to two or three years ago,—we will take the Twin Cities to Chicago, for example,—the short mileage is 400, the rate was $11.50, nearly three cents a mile; since the states through which, or into which, the routes from Twin Cities to Chicago pass, have adopted two cents a mile as a maximum, it is utterly and absolutely impossible, in your opinion, is it not, for any carrier to enjoy substantially a higher rate than two cents a mile, and, as a matter of fact, the rate has been reduced to exactly two cents a mile, has it not, by reason of the state reductions?

A. Well, the rate has been reduced between the Twin Cities and Chicago to, I think, exactly two cents a mile, based on the short line.

Q. That reduction was made since Minnesota, Wisconsin, Iowa and Illinois went upon a two-cent-per-mile maximum basis?

A. Yes, I think that is a fact.

Q. Now, I would like your opinion as to whether or not it would be possible for a carrier to enjoy any higher rate than two cents a mile, under such circumstances, between the Twin Cities and Chicago.

A. Of course, answering that question, technically, they would not be in any way forced to reduce that interstate rate. Now, I am speaking particularly of the Chicago rate.

Q. Well, I meant practically, I wasn't trying to get your opinion upon the legal effect.

A. Well, I was going further. But I think it is apparent that I look beyond the legal effect in most of these cases and take the practical side, because, in the end, that must govern in most matters so far as the question of relation of rates is concerned,—

Q. I think so.

A. —and it was found, in the case of the passenger rates, that passengers were taking advantage of the local rates—

I don't know to what extent, but I know it was done a good deal. I suppose that, out of a hundred passengers but very few would do that—not because of the principle or lack of principle involved, but because of the inconvenience. I think that may have been one influence with the carriers, but I believe a greater influence was the moral influence,—that if they carried passengers locally in all the intervening territory on a basis of two cents per mile they could not, in justice, carry passengers at a higher rate upon the longer distances, or the through passengers. Of course, I don't know just what influenced the companies, except as I have talked with individual officers, but that is my view of the question, and I think those two influences are sufficient to make it perfectly apparent that they could not hope to continue to secure a higher rate for through passengers than they did for carrying passengers locally. When I say the rate I mean rate per mile, because that is the basis of passenger rates, as a rule; not always, but—

Q. And what you have said as respects the Twin Cities-and-Chicago passenger situation, would be applicable, under like or similar circumstances, in every other direction in interstate travel, would it not?

A. Well, of course, it would be more difficult to force those conditions upon the railways through western travel, for example, but I doubt very much, if there were a two-cent-maximum-passenger-rate law in every state between here and Seattle, if the roads would not, in a short time, be charging two cents or as near two cents as they could get for through traffic.

Q. Well, if there were a two-cent rate in Minnesota (as there is now) in effect, and a three-cent rate in Dakota, it would be impossible for the railroad companies to continue to enjoy three cents from eastern Minnesota points to Dakota

points, would it not, or any rate substantially higher than the sum of the locals?

A. Did you mean from a point within Minnesota?

Q. From eastern Minnesota points to points into Dakota, where the mileage in the two-cent rate territory would be sufficient to make a substantial difference between the sum of the locals and a three-cent-through rate.

A. Yes, that same condition would influence, in that case, in the course of time, that influences the Chicago rate.

Q. And it would make it impossible, would it not, to maintain a three-cent interstate rate to any points in Dakota from eastern Minnesota? When I say maintain I mean to maintain it.

A. Yes,—well, I think it would; but I think the greatest difficulty that the companies would meet would be the moral influence, which would, perhaps, be a very great one.

Q. Yes, sir; as, for instance, some people could, whether the company were willing that they should or not, buy from St. Paul to Moorhead on a two-cent basis?

A. There is no question that they have resorted to that.

Q. And from there to Bismarck, or Dickinson, or the most westerly point in Dakota, and all points in the state, on a three-cent basis, and save money, that is, save the amount of one cent per mile for the travel in Minnesota?

A. Of course that is true, but that would not be true to all points where you cross the state line. You have selected a place where that is a very practical proposition, but even then, Mr. Butler, we have to recognize or appreciate the difficulties that the ordinary traveler would encounter to undertake that if he has baggage.

Q. I was about to recognize that in my next question. Now, if it be assumed that some would do that and that others would not, the railroad company could not then be said to be maintaining the rates, because those who chose could have

the lesser rate and those who didn't so elect would pay the tariff; isn't that about the situation, and because of the injustice that would so result, every consideration of fairness to the public would require that all be put on the same basis?

A. Well, I think that one can't get away from that, time has proved that it does result in that, and the influences that I speak of I believe to be the prime or chief factors in bringing it about.

Q. Do you not think that, in the passenger business, it is absolutely necessary, in order to be fair, that the interstate rates shall not exceed the sum of the locals?

A. To be fair, yes, sir.

Q. Any disregard of that is sure to result in unfairness—

A. I think so.

Q.—under any normal or natural conditions. There might possibly be some exceptions?

A. Well, of course, I don't need to explain that every time.

Q. That is what I meant. Now, during this case, the expression "a rate reasonable in and of itself" has been used a number of times, I am not sure whether you have used it or not—

A. I have not.

Q. Do you know what it is?

A. I know it has been used a good many times.

Q. Well, do you know what "a rate reasonable in and of itself" is, and if you do, can you tell us so we will know?

Mr. O'BRIEN: That is a term that I have used very often, and if you want Mr. Staples to give his understanding of my language,—it ought to be complete. The term that has been used is "a rate in and of itself, as applied to the traffic which it covers." I think that addition ought to be made if the interpretation is to be given. Then the term may be interpreted.

Q. You may consider the question amended as Mr. O'Brien

suggested; I didn't hold in mind the rest of the phrase when I framed my question.

A. My idea of that question would require a material broadening of the question before any definition I would care to express could apply. My idea is this—

Q. Well, before we go into that, I will ask you this: Could you define it as applied to a single rate on a single commodity? We will say, for example, the rate on soft coal from Duluth to Moorhead?

A. Is what?

Q. Could you define it as applied to a specific article, as distinguished from a schedule of rates? That is, could you define it as applied to the rate prescribed in Chapter 232 on soft coal from Duluth to Breckenridge?

A. Undertaking to confine myself to the rate, as you suggest, upon soft coal, I will take the schedule of rate upon soft coal and say that it is reasonable and just, in and of itself, *if* when compared with the rates upon other commodities,—and that necessarily takes in all the rates which go to make up the earnings of the company—it is fair and just in its relation. Now, that has more to do with the value of the service or the value to the consumer and to the company than it has to what the earning upon that particular rate would be. In other words, I don't believe you can separate the rate upon any one commodity, if you are undertaking to do justice to all the people of the state and to the carriers, and consider that that rate must, in and of itself, bring to the company what we have commonly called here "just returns."

Q. Or its share of the just return on the whole; would that be in line with your thought?

A. Well, I could say this: its share might be a very much smaller share.

Q. Well, its ratable share or percentage share?

A. Well, its relation share, considered by measuring the

value of the service to the people served and, in return, the value it is to the company to handle that particular product, not measured by the net earnings entirely—it has a different measure of value than that, that would be one measure of value, however.

Q. Is that all, Mr. Staples?

A. Well, I might talk a long time, but I have no desire to.

Q. Now, in order that we may more clearly understand your definition of a rate "reasonable in and of itself," is there any other aspect in which a rate or rates may be viewed and defined, that is to say, may a rate be said to be reasonable in and of itself when it is not reasonable in the ordinary acceptation of that term "reasonable"? What I am trying to get at is this, are there two tests of reasonableness, one being reasonableness "in and of itself as applied to the traffic covered," as Mr. O'Brien has defined it, and is there another kind of reasonableness as applied to the rates? Do I make myself clear, Mr. Staples?

A. Yes, you do, if you would intimate what other kind you mean.

Q. In view of your definition, I don't know that I can think of any myself.

A. Well, I don't.

Q. I can't think of any. So the test of the reasonableness of a rate in and of itself,—or one of the tests is to be made by comparison with all the other rates going to make up all of the revenue from all sources of the company; that is not the essential test, but one of the tests?

A. Yes, it is.

Q. It involves the idea of comparison with all other rates, necessarily that should be a consideration; and when you said all the other rates going to make up the earnings of the company, did you include intrastate and interstate?

A. Not at all.

Q. You included intrastate alone?

A. Yes, sir.

Q. So, then, in determining whether or not a rate is reasonable in and of itself, the earnings on interstate, the rates on interstate business, the volume of the interstate business—none of those things should be taken into consideration at all?

A. That is my view of the question.

Q. Now, suppose we were trying to get at the reasonableness of an interstate rate, in and of itself, would it be compared at all with the state rate or any of the state rates, or must the comparison be made wholly between interstate rates: is that your idea?

A. Yes.

Q. So then, it amounts to this, then, as you understand it: The expression "a rate reasonable in and of itself as applied to the traffic covered by it" simply means a reasonable state rate?

A. Yes, sir.

Q. And an interstate rate that is reasonable in and of itself as applied to the traffic that it moves, simply means a reasonable interstate rate?

A. Yes, sir.

Q. Now, that is all there is to it, as you understand it?

A. Well, as I said, I might talk upon the question from now until noon and then this afternoon; I might throw some more light upon it, Mr. Butler, but I think I have manifested here my purpose to be brief and as direct as I can.

Q. Yes, I think so. I wanted to be sure that I understood your point, that is all. Then would it be possible, in your opinion, to have an interstate rate on soft coal from Duluth to Breckenridge on the Northern Pacific road, which was reasonable in and of itself, it being $15 less on the car than would be the interstate rate from Duluth to Wahpeton? could each be said to be reasonable in and of itself, the state rate to

Breckenridge and the interstate rate to Wahpeton, comparing the interstate rate with the state schedule and the interstate rate with the interstate schedule?

A. If the two cars were hauled by the same company, over the same line, under the same conditions, I would say no, the relation would not be reasonable.

Q. One or the other would not be reasonable?

A. One or the other, I would hold, would be an unreasonable rate.

Q. One or the other would be unreasonable?

A. Yes, sir, to those points indicated.

Q. Now, my recollection is that Mr. Flinn told us that $15 (I am not perfectly sure) would be the difference between the interstate rate from Duluth to Wahpeton, Northern Pacific, and the state rate on the same line, Duluth to Breckenridge, Northern Pacific.

A. Of course I have no knowledge what the difference would be, but it would be considerable, knowing the difference in the rates which have taken place.

Q. Yes, it is about $15. So, one or the other of them would be unreasonable?

A. I would think so.

Q. And one or the other of them would be unreasonable in and of itself, would it not?

A. Yes, but I would have to say, at that point, Mr. Butler, that the authorities, whether that should be governmental or the railway companies or the traffic men, might regard the relation between rates or might justify a different relation between rates upon different commodities than what I would.

Q. Yes, I will come to that in a moment. Now, let us assume that both rates were made by the same authority; first, the railroad company; you would say that that railroad company was unjustly discriminating, wouldn't you?

A. Yes; of course, in answering all those questions I am

only viewing the question from the standpoint of eliminating the state line and recognizing the exact conditions which surround those two places you name.

Q. Yes, I understand; that has been so often explained that it will be taken as assumed.

A. I took it I didn't have to explain it every time.

Q. Now, if the State made both rates, it would be guilty of injustice and unjust discrimination, would it not?

A. Under the circumstances indicated, yes, sir, in my judgment.

Q. If the Federal Government made both, it would be guilty of unjust discrimination, wouldn't it, in such a circumstance?

A. Yes, sir. Of course, I can't conceive that either authority would do so.

Q. And if the State made one and the Government made the other, the net result of the conduct of both would be unjust discrimination, would it not?

A. Yes, both in the treatment of the company or companies and the parties served.

Q. Now, Mr. Staples, you have said that, as a practical matter, it is impossible to take any single rate upon any single commodity or class, and determine whether or not it is a just and fair rate, but that comparison must be made; I think I am giving it right?

A. That is practically my view of the question.

Q. And under the idea of your Commission, coal is one of the favored commodities, which should bear a low rate?

A. Yes, sir.

Q. That is the public policy of the legislative power of the state, as respects that commodity?

A. Yes, that is true.

Q. Grain is another,—not in like degree, but—

A. Not nearly so much so, but—

Q. It is favored though?

A. Yes.

Q. And when we say favored, we mean greater influence is allowed from the fact that both these commodities affect the welfare of a great many people?

A. Yes,—perhaps I could just say a word that would throw some light upon that: If we were making a rate in Minnesota upon cotton, we wouldn't give it, at all, the same consideration that they would in Kentucky.

Q. And nobody would quarrel with you, no matter what you made on it, would they?

A. That would be one idea; but the chief idea is that nobody would be benefited or injured by whatever the rate might be upon cotton in Minnesota. But that is a commodity which, in the states where it is one of the chief means of livelihood, receives, undoubtedly special consideration.

Q. So, then, in determining the reasonableness of any schedule of rates, the whole must be taken into account and not a part of it?

A. I hold that view, Mr. Butler.

Q. Now, the classification is as important as rate-making itself, is it not?

A. Yes, sir.

Q. Now, let us assume this state of affairs, Mr. Staples, as respects interstate rates from and to Dakota, Minneapolis and Duluth, and state rates in Minnesota: Let us assume that it is the policy of the State of Minnesota to permit a schedule of rates which, on the whole, under proper conditions, will assure to a railroad company a return, upon the value of the property used for that particular traffic, of seven per cent, and that the schedules which are here in question will do that thing; and let us assume that it is the policy of the National Authorities to permit the railroad companies, (for the sake of the example,) to apply schedules which will yield a re-

turn of fifteen per cent on the value of the property used in interstate commerce; and then let us assume, further, that the interstate rates on commodities that are now in are just sufficient to do that sort of thing; will not the enforcement of the state rates put the policy of the State in the supremacy as against the policy of the Nation?

Mr. O'BRIEN: This is treason!

Attorney-General YOUNG: I think we ought to object to that as calling for a constitutional opinion by a man who does not profess to be a lawyer. It certainly has no application to any question that is pending in this rate controversy.

A. Well, Mr. Butler, in my narrow sphere and limited experience, I don't believe anybody appreciates more than I do the condition the railway companies find themselves in when they undertake, or necessarily, when they yield to the controlling or to the undertaking to control of State and National authorities. Departing a little from the direct answer, I will say that all the influence that I have been able to use, and whenever opportunity presents, is directed to as near a co-operation with federal authorities as possible and to secure co-operation of state authorities, both upon legislation and upon regulation and control; but if we had no control within the state vested in state authorities, my honest opinion is that we would have very little control of any kind locally or very little opportunity afforded the people for relief from any unreasonable or unfair treatment on the part of the railway companies—not assuming that they intend to be unfair for a moment. And what you state might possibly be true, in a measure, but it could not be held that the state authorities were doing anything that was unreasonable if their action was sustained by the courts. Now, if the Court could sustain the State in doing what you outline in your question, and the Federal Authorities also be sustained by the same Court if they undertook to do what you outline in your question, why

it looks to me as though the railway companies would be "up against it;" but I can't conceive that such would be a logical conclusion, for a moment.

Q. Well, suppose we would consider, as respects passenger traffic, that it is the policy of the State that the passenger business should yield less in the way of net, if it were a favored traffic, like coal, than the Government or interstate authority thinks it ought to yield, and the State thinks two cents per mile as maximum fare is right as a matter of public policy, but national authority is of opinion that three cents ought to be permitted and is right as a matter of public policy, would not the enforcement of the policy of the State upon that subject deprive the railroad companies of their power to enjoy the higher rate, and would it not, as a practical matter, deprive the Government of power to enforce its policy as respects passenger rates for the reasons that you have given us, touching Chicago-Twin City passenger travel and Eastern-Minnesota-Dakota passenger travel?

A. I think there is a good deal of force in that statement, so far as it refers to the passenger traffic.

Q. It is true, isn't it, obviously true, as to the passenger traffic?

A. Of course, while it is true—that is, taking the present situation, I think it is true, almost literally so; I would like to say, however, that I don't believe it possible to right a wrong in a short time, but those wrongs, if they are wrongs, will undoubtedly be righted in time. Now it would be very unbecoming of me to criticise the legislative policy in establishing a two-cent rate in Minnesota and I have no purpose in doing so, but I stated here, yesterday, that it was not the intention or thought or purpose of the Commission to attack passenger rates in Minnesota at all, at any time, when the freight rates were under consideration.

Q. As a matter of fact, in 1903, pursuant to a resolution

of the legislature, directing your Commission to inquire whether it would then be feasible to put in a two-and-a-half cent maximum passenger fare after industrious and vigilant inquiry upon the subject, your Commission reported that, in its opinion, a reduction from the 3-cent maximum ought not to be made, did it not?

A. That is true.

Q. So, that, in 1907, the public policy of the State as expressed through the Commission, was reversed by the legislature expressing its own view or expressing the legislative view of the proper public policy?

A. Well I wouldn't want to say it was reversed. Four years had transpired, and the legislature seemed to deem, did deem, advisable to make a reduction in passenger rates.

Q. Conditions as affecting passenger travel, and passenger earnings and population, and all of the things which you took into account when your Commission reported against the wisdom or feasibility of making 2½ cents the maximum, had not, in your judgment, so changed or modified as to make two cents a right maximum during the four years?

Attorney General YOUNG: I think we will have to object to this question, it is simply asking the opinion of this witness as to the wisdom of an act of the legislature. The reasonableness of the rates prescribed by the legislature cannot depend upon the opinion of this witness. It is perfectly proper to ask his opinion as to rates fixed by his board, but I don't know why we should all wait here while the views of any individual as to what the legislature did two years ago shall be given in this trial. The question is, are the rates reasonable, not what any individual thinks about them.

The MASTER: The objection will be noted. The witness will answer if he can.

A. My statement made two or three times, that the Commission did not entertain any thought of a reduction in the

passenger rates, may be amplified by saying that in the opinion of the Commission, the greater benefit to the public would be had, if any reduction in the revenues of the companies was to be made should be made in the freight-rate schedules.

Q. Now, going to the subject of classification, is it not true that should the policy of the State as respects classification—In the first place, this classification in chapter 232 is a new thing, is it not? There is no such interstate classification at all, is there?

A. Well, not literally so. Of course there is provided, in the tariffs of the companies, groups of commodities which will be carried at certain specified rates, and with few exceptions did our Commission in making its order change those groups. They were changed, for example, on the northern lines, by separating the coarse grains from the wheat and flax. That, you might say, made two groups rather than one, which those roads had maintained. They were not known as classifications, we did not designate them as classifications, but it is almost the universal rule that the groups which our Commission framed up or made in the order are the groups generally recognized by different roads and in different states. Now, the legislature in its enactment simply took those same groups and designated them as a class, giving it a number, and that system does not prevail, to my knowledge, anywhere.

Recess until 2 P. M.

AFTERNOON SESSION.

Q. Mr. Staples we were speaking on the matter of classification when we adjourned at noon. Let us assume that there be two kinds of classification, one made by the state authority, and one made by other authority; that made by the state authority purporting to apply only to intrastate business and the other classification purporting to apply to the interstate business, and assume that the amount of revenue that each

schedule of rates would return would be reasonably sufficient, but that in the classification the amounts varied on different commodities; for instance, the state authority favoring coal, and the other authority not; it would be possible, under such classifications, would it not, made on the basis of different policies to make a schedule that would yield a reasonable return under the circumstances and still variations or differences exist in the rates upon the various articles or commodities in the classification?

A. Why, on the assumption of facts you present, that would inevitably follow as a conclusion.

Q. Well, now in case that thing happened, in order to avoid injustice, would not the railroad companies have to be guilty of discrimination or depart from the classification of rates prescribed, when it came to compare intrastate with interstate business?

A. Yes, that would be true too. I don't think I ought to answer that in the affirmative, however, without going a little further.

Q. You may, so far as I am concerned.

A. In the ordinary acceptance of the term, the classification covers all items which are not carried under commodity rates. A commodity rate simply means that certain articles of freight are taken out of the classification and given special consideration, and those considerations differ in different parts of the country, according to the character of the traffic and the conditions which prevail. We have, at the present time, practically three classifications in the United States. They cover certain and specific portions of the country. Take the Western Classification, for instance, it practically takes in Wisconsin, reaches Chicago, I believe, and I don't know the exact line, but goes West, takes in Minnesota, of course, and the Dakotas, and clear to the Pacific coast. But on the subject of classification, there is an effort being made now, and

a very serious effort, and, in my opinion, will result in adopting a classification which shall be uniform throughout the United States. But there naturally will have to be certain exceptions from that classification to fit the conditions in certain localities, that cannot be avoided, but we can eliminate three classifications, and it is going to be done, I have no doubt about that at all. Now, speaking of the rates which would govern on the principal or large commodities, they might be different, but it would simply be a question of what rates or what manner the federal authorities might conceive to be the reasonable manner of grouping or showing the relation of these different commodities as they might differ from the grouping by the state authorities. But assuming your statement, for the present, to be a fact, my answer would have to be yes.

Q. So, that, the enforcement of the State's classification, either as respects the merchandise rates or the others, in Chapter 232, would have the effect of controlling the policy with respect to the classification on interstate shipments, or, at least, that would be the tendency of the enforcement of the State classification?

A. Well, now, I will have to confine my answer to what I accept as the meaning of classification, and that means to cover the so-called Western Classification, which is the Minnesota classification. That would not follow, Mr. Butler. We make certain exceptions, to fit what we believe to be the conditions in Minnesota, but the interstate shipments move, right along, under the Western Classification. Now, perhaps that does bring about some differences between the rates themselves upon certain specified items.

Q. Yes, and if decided, as respects traffic, that the freight rate is an important factor in the price, it would bring about a discrimination, too, would it not?

A. Yes, but the changes made in the classification hardly

reach that class of traffic or the class described by you.

Q. Now, as respects coal, whether classified or not, or any other commodity which you take out of the classes and make a rate on,—a favored, a particular commodity,—that same commodity must be favored by the interstate rates, or discrimination will result; isn't that true? It must be taken out of the class by the other authority controlling the interstate classification and rate or the railroads must take it out, to avoid discrimination, isn't that the situation?

A. Yes, that would be true, but the action of the Commission in this particular instance, or its method of handling that subject, does not depart very much, if any, from what is the prevalent custom in the country.

Q. I was not intending to inquire so much into the precise fact that happened by the very rates under contest here, as to get at the general rules of interdependence of state upon interstate rates, Mr. Staples. I wasn't picking out any particular instance, but merely using illustrations for the purpose of getting at the rule.

A. Yes. Well, there is no doubt, Mr. Butler, that it could be possible to have a very wide difference in the relation of different articles which move either under commodity or classified—

Q. Coming back to my original assumption, having two different bases for classification, one for intrastate and the other for interstate, the whole schedules, themselves, being so arranged as each to yield the same rate of return, a reasonable return at that, still, unless the classification substantially corresponded, the railroad company would have to conform to the lower or be guilty of discrimination, would it not?

Mr. O'BRIEN: I would like to ask the counsel, when he uses the word "discrimination," whether he means discrimination which is prohibited. For several days, the term "discrimination" has been used, and it seems to me we ought to know

whether it is intended to be used in the sense in which that term is understood to be an illegal and unjust discrimination.

Mr. BUTLER: Well, I have used it, I am very sure, Mr. O'Brien, in different senses. But when I just say "discrimination" I am not certain that I could positively state what was intended in all instances, but in this particular instance I meant an unfair and unjust discrimination. I have sometimes used it as synonomous with "difference."

Mr. O'BRIEN: Yes.

Mr. BUTLER: I think it is synonomous with "difference" in meaning, and there may be a just difference or an unjust difference.

Mr. O'BRIEN: Yes.

Mr. BUTLER: But, as a general rule, I intend, and did here, to mean an unfair and improper difference or discrimination.

Mr. O'BRIEN: For instance, take the condition where excessively low rates are permitted because of water competition, that is a discrimination in rates, but it is not an unjust discrimination, and what the law prohibits is an unjust discrimination.

Mr. BUTLER: It is held to be legal unless it is too much, under the circumstances.

Mr. O'BRIEN: Yes, the law does not prohibit a difference in rates; it is an unjust discrimination. I didn't want to interrupt you but I thought, if we got straightened at this time, it might save some time on re-direct examination.

Mr. BUTLER: In this particular matter I meant unjust discrimination.

The MASTER: Unlawful discrimination.

Mr. BUTLER: Yes, sir, unfair.

Last question read.

Q. I mean, by that, the lower rate prescribed for each article in the class, would be guilty of an unjust discrimination, if the difference was serious.

A. Upon that assumption of facts if that should continue to be the case, I think that would naturally follow.

Q. So, then, the enforcement of the State's classification does, as a matter of fact, preclude adherence to any other that is substantially different in arrangement?

A. Well, the practice has not, so far as I know.

Q. I am again pursuing the inquiry for the purpose of establishing the general rule as to the interdependence of the local and interstate rates, one upon the other.

A. I don't think that I could assent to that, Mr. Butler, any further than I have done so.

Q. Well, I think perhaps my question doesn't call for any further. It was rather a reiteration, or a conclusion, from what you have said, that I sought by this question. Let us depart from that and illustrate it in another way. For example suppose the rate of fare for children under 12 years of age is one cent per mile, in Minnesota; it would be impracticable, would it not, to enforce any different classification, or a different classification, by which children would pay two cents on interstate commerce?

A. Well, I think I indicated this morning the clear distinction between freight traffic and passenger traffic and the influences which govern, and I think, with reference to the last question you ask, that I answered that four or five times this morning. The company would feel morally bound—

Q. I don't say anything about the classification of passenger—

A. Here in this question?

Q. I am calling attention now, to the one-cent rate for children. Does not the enforcement of the policy of the state prohibit the adherence to any other policy?

A. Well, you referred in your question, Mr. Butler, to the matter of classification, and I assume that the interpretation should be that you were classifying children as a class and

you stated that the rate in Minnesota should be one cent.

Q. Yes. Now, assuming that to be the fact, do you not agree with me that it would be practically impossible to avoid following that classification in interstate passenger travel, either by the railroads or governmental authority?

A. Why, I could not do more than repeat what I said this morning upon that subject. It would fully answer the question. First, I state that very different influences govern in the matter of making passenger fares and that, ultimately, it would result in an interstate rate, no higher, under most conditions, than the sum of the two locals.

Q. And from that it follows that you could not enforce any other classification, or that no other classification could be enforced by any authority, as far as passengers are concerned, as respects children,—isn't that true?

A. Well, I don't want to say technically but practically I think it would result in that.

Q. That is what I meant; I meant practically. Is coal included in the Western Classification?

A. No, I think not except coal in bags.

Q. Coal in bulk, in carloads is not in?

A. I do not think it is in the Western Classification; I might be mistaken, but I think not.

Q. The maintenance of different rates (so different as those from Fargo, Moorhead and other similar points, which have been pointed out here,) would have the effect, would it not, of impairing and injuring the interstate commerce to and from the interstate points? Take it, for example, on the commodity list, comparing East Grand Forks with Grand Forks, Moorhead with Fargo, and Breckenridge with Wahpeton, suppose you leave in the interstate rates and put in the proposed rates of Chapter 232, one of the effects would be to impair, if not destroy, commerce to the Dakota points?

A. I think that should have a very marked influence upon

traffic to any point immediately across the line which was in any sense a competitor in a business way with the points on the Minnesota side.

Q. And would impair the commerce in those places, would it not?

A. I think that is what I said.

Q. You meant a marked impairment, no doubt, didn't you?

A. It couldn't be interpreted otherwise; at least, in my mind.

Q. Probably we ought now (it is out of order) to finish with information furnished us by Mr. Flinn this morning; we have now the right figures as respects coal to the border points. On the Omaha road, from Duluth, hard coal, 50,000 pounds to the car, Elmore reduction, $3.50; Bigelow, $4.25; Ash Creek, reduction, $4.75; Beaver Creek, reduction, $6. On the Great Western, Taopi, reduction, $13.25; Lyle, $7; LeRoy, $7.75. Minneapolis & St. Louis, Twin Lakes, $7; Marietta, $5.25; Dunnell, $5.25. On the St. Paul, Reno, $8.25; Dresbach, $10.75; Lyle, $5.50; Wheaton, $7.25. On the Rock Island, Gordonsville, $5.50; Bricelyn, $7; Round Lake, $3.50. On soft coal from Duluth, average carload 50,000 pounds, Omaha railway, Elmore, $7; Bigelow, $8.25; Ash Creek, $9.50; Beaver Creek, $10.75. Great Western, Taopi, $.75; Lyle, $.75; LeRoy, increase, $4, if the rates were applied, but Section 7 prohibits that, which would leave no change. On the St. Louis, Twin Lakes, $1; Marietta, $9.25; Dunnell, $8.50. On the St. Paul, Reno, $17.75; Dresbach, $19.75; Lyle, increase, fifty cents; Wheaton, $7.75. Rock Island, Gordonsville, increase, fifty cents; Bricelyn, $4.75; Round Lake, $7.75; the increases, of course, would not be permitted.

The MASTER: Except where otherwise indicated, that is a decrease in each case?

Mr. BUTLER: Yes, sir, reduction. I said "increase" every place where it was increased.

Q. I observe that the reduction on a carload of soft coal of 50,000 pounds, from Duluth to Dresbach on the Milwaukee road is $19.75; that amounts to about 70 cents a ton, and is quite a serious item in the price of soft coal, is it not?

A. It would be, yes.

Q. Now, I want to refer to the matter that you spoke of in your direct examination where you took Norwood, I think, and I want to take Montgomery, because my recollection is that Montgomery was the point cited by Mr. Tittemore, on which you made quite an elaborate explanation in your direct examination. Lake coal and southern coal (by that I mean Iowa and Illinois coal) are both used in that territory and in southern Minnesota generally, are they not, Mr. Staples?

A. Yes, I think in southern Minnesota they use coal coming from both points. I have no personal knowledge upon that subject, Mr. Butler; I have a general knowledge.

Q. And you understand, and, I think, stated, that the quality of the coal was different, the price of the coal was different and the rates from the mines to the points of consumption?

A. All the testimony had before our Commission—

Q. Tends to show that?

A. Yes.

Q. And the testimony here, I think, does?

A. Yes, I think so.

Q. Now, Illinois coal mines are reached by the Milwaukee road, as you understand?

A. Yes, sir.

Q. That furnishes a continuous line from those mines to Montgomery and to all Milwaukee points in southern Minnesota?

A. Yes, sir.

Q. Do you not understand that notwithstanding the kind of coal is different (that is, lake coal as compared with Illinois coal) and that the price is different and that the freight rate

is different, still that there is, as a matter of fact, a relation between the prices of coal? That is, if one should go down very considerably in price, the tendency would be to drive the other out of the market, would it not; or, if one should rise in price the tendency would be for it to be withdrawn from the market?

A. Well, I would have to assume that that would be the case. I haven't knowledge of all the circumstances.

Q. Well, the statement of it is so probable that you think it is a safe one?

A. It would seem so to me.

Q. Now, if the Milwaukee road, by reason of the reduction on coal in the state from Duluth to its points in Minnesota, felt that, in justice to its interstate business from the Illinois coal, it should reduce the rate, or announced, at the checking in, that it would reduce the rate from Illinois coal points to its points in southern Minnesota, to Montgomery or Norwood, where it reaches the Minneapolis & St. Louis, the Minneapolis & St. Louis would have to meet that rate so put in, or withdraw from the coal-carrying business to those points, would it not?

A. Yes, I think so; it would, without doubt.

Q. And that is the precise thing that occurred, as you understand, is it not? That, upon the passage of this law, when these railroad companies got together to check in their rates, it was announced that these continuous lines from Illinois into Minnesota would reduce their rates and that therefore it became necessary for the Minneapolis & St. Louis and its connections to withdraw from the business or lower rates; isn't that the situation as you understand it?

A. Well, I don't think I have any knowledge upon the point you just now introduced, Mr. Butler. In fact, I don't recall any knowledge upon that at all.

Q. You don't know about their having met in Chicago and

checked in the new interstate rates?

A. Well, if I did, it was a very indefinite knowledge, and really I don't recall it at all now.

Q. And it would have exactly the same effect, would it not? This $19.75 reduction to Dresbach, for instance, from Duluth, would influence a reduction on all lake coal from Superior, Ashland, Gladstone, Manitowoc, Sheboygan, Milwaukee and Chicago?

A. I think it would more or less. I am not accepting those figures; I don't know anything about those figures, Mr. Butler.

Q. Mr. Yapp brought me these and I assume they are right. But independent of the absolute correctness of the figures, the figures being correct, it would substantially have that effect, would it not?

A. Yes, I think it would, more or less.

Q. I will ask you, with reference to this statement furnished by Mr. Flinn through Mr. Yapp, to have it checked, and if there be any inaccuracy in the figures call attention to it, and if there be not, it will be taken that it is correct as read.

A. I will ask Mr. Yapp to verify the statement; I don't know anything about it at all.

Q. In your direct examination, Mr. Staples, you entered upon the subject of getting at the proportional value of the whole property of each railroad within the state which is chargeable to the intrastate business, and you spoke of several different methods, two of which I hold in mind; one was the apportionment on the basis of earnings; that is, as I understand it, that method would be applied this way, for example: if the earnings of a railroad in the state were $300,000, derived from intrastate and interstate business which moved within the state, and $100,000 of the earnings were strictly local business, then one-third of the total value of the prop-

erty in the state would be charged to the local business and two-thirds would be charged to the interstate business within the state. Is that a fair definition of the division upon revenue basis?

A. Yes, I think it is, Mr. Butler.

Q. Now, the other basis was on the basis of operating expenses. If you take the same example, and say the total operating expenses properly chargeable to the state for doing all business on the rails within the state were $300,000, and $100,000 of that is properly chargeable to the local business, then one-third of the value of the plant should be charged to that business and two-thirds of it should be charged to the interstate business. Is that a fair definition of the division on the basis of operating expenses or cost?

A. Yes, sir.

Q. Now, you mentioned five, I think, Mr. Staples, and what were the other three? or, give me another one, first.

A. Well, another one was the relation of the roadway mileage within the state to the entire road mileage of the System.

A. Well, you don't have any respect for that method at all, do you?

A. No.

Q. We might as well eliminate that as an improper one, in your judgment?

A. Yes.

Mr. BUTLER: I think it was made clear in Mr. Staples' direct examination what that division on mileage basis means.

The MASTER: Yes.

Q. What was another basis?

A. Another was the net earnings.

Q. And by net earnings you mean earnings over and above operating expenses and taxes?

A. Yes.

Q. If there were $2 net for the interstate business to $1 net for the local business, then the division would be one-third to the local and two-thirds to the interstate?

A. It would be upon the same plan.

Q. Now, that is four that you have spoken of. Wasn't there still another?

A. I had in mind there were five.

Q. Was it tons moved or train miles?

A. No, it was the tons moved one mile. Of course, I do not think that I treated it at the time, but the passenger business would also be a factor.

Q. To be divided on the passenger-mile basis?

A. The same plan would apply, but that would not be involved in these other cases, necessarily, in the same way.

Q. No, it would have to be treated separately in this last method.

A. Yes, sir.

Q. Now, do you think that a practicable way to do? I am speaking now of the last method.

A. Well, no, Mr. Butler, I do not.

Q. My recollection is that you expressed a preference for division on the basis of operating expenses.

A. Yes.

Q. You think that the most reasonable, under all the circumstances?

A. Yes; and in giving that testimony, Mr. Butler, I said at the time, and I ought to reiterate it now, that those were suggested methods which were considered by me; they were expressions of personal views upon the question, and surely not given in the light of being an expert but open to conviction and glad to hear the views of anybody,—and believe I have heard the views of quite a good many people upon the subject.

Q. Well, no method that has ever been suggested to you

is, to your mind free from objection?

A. No; no. Yes, no method is free from objection. And when I say that, I mean that no method can be suggested (at least none of those) and I know of no method that does not involve more or less complications which it is difficult—

Q. —to solve?

A. —to solve, or from which it is difficult to escape; and naturally it follows that in some respect or other the rule will be arbitrary in its enforcement, and cannot be explained upon any basis other than that which appears to be the most equitable.

Q. Great difficulty arises, on the face of the thing, to get the factors to apply, either the division on the basis of operating expenses or earnings, does it not?

A. Yes. Now, I don't mean that that is impossible at all.

Q. No, but I mean great difficulties attend it.

A. Yes, as railway accounts have been kept and are kept, that is true.

Q. And especially as to the division of cost between freight and passenger—

A. Well, of course,—

Q. —which is local?

A. Certainly, that is true, too. You must adopt, in any undertaking you seek to work out, certain features which will be arbitrary, you can't escape it.

Q. Now, the amount of the use of the property for interstate business has to be gotten at in order to determine whether or not any given schedule of state rates is reasonable, Mr. Staples?

A. It has to be approximated.

Q. Yes, I mean gotten at, as for example, you will probably say that, as to the roads in this litigation, these rates in question would be too low if the whole property of the state (within the limits of the state) were to be charged to the

business; that is, if these roads had no interstate business, and no proportional use of the property were to be charged to interstate business, would you not?

A. Why, that would vary with different roads, but considering the relative amount of intrastate business to the interstate business, that would be true, in my judgment. In my judgment that would be true.

Q. Yes, because the proportion of the whole that is local within the jurisdiction of your Commission is, in all instances, a smaller proportion, and, in some instances, a very small proportion?

A. On all the large systems it is a very small proportion, and even on systems which are entirely within the state, a very large part of their business is interstate business.

Q. Since I commenced this cross-examination, have you at all refreshed your recollection upon the matter as to whether or not your Commission ever, before the commencement of these trials, had before it the amount of intrastate earnings per annum for any of the roads? Do you recall what I mean?

A. I know what you mean. I do not recall the original question. I understand your meaning now.

Q. Well, you have in mind that it appears from the testimony of Mr. Johnson, in the Northern Pacific case—

A. Oh, I know your point now.

Q. —that the Company—and is it not also true that all of the companies, have customarily erroneously reported more earnings as local than were in fact intrastate?

A. Yes. I didn't understand your meaning, at first, as I thought I did.

Q. And in the case of the Northern Pacific Company the error appears to be about 49 per cent?

A. I have no knowledge as to the per cent, but—

Q. That is the testimony, I think.

A. —but it is a fact, as you state, and that error was dis-

covered by our people when they came to analyze these way-bills.

Q. And it was, by ours, when we came to prepare this lawsuit for trial.

A. Well, I don't know of that. I know that is true, I don't know to what extent.

Q. If, as a matter of fact, the percentage of intrastate earnings in the state to interstate tons and car miles is only about half what you supposed it was, would that be a factor in determining whether or not the rates are reasonable?

Mr. O'BRIEN: I think you have got that matter a little wrong, Mr. Butler; I think you are falling into an error there.

Mr. BUTLER: Well, maybe I am; I would be glad to know it if I am.

Mr. O'BRIEN: I think the mistake was this, I think that, in arriving at the directly intrastate earnings, the road had made an error, but that they were earnings of a character which were carried under way-bills, (for instance, of the Northern Pacific,) at the state rates and under conditions governing a haul for the state, so that in the question of the rates themselves, they being under those conditions, it does not have the effect suggested by Mr. Butler's question. Now, I may be wrong in that, myself, and I am not at all sure that Mr. Staples understands about it, but that is my understanding of it. I think probably it is proper for me to call Mr. Butler's and Mr. Staples' attention to that matter.

Mr. BUTLER: I will relieve the situation by modifying the question so as to ask him to assume the cutting-in-two of the business, without distinction as to its character, and if the character of that which has been eliminated affects the matter, it may be made to appear afterwards.

Q. But, Mr. Staples, if, as a matter of fact, the interstate business and earnings were just half what it was reported to be, would not that call for higher rates on the local business?

A. I might want to modify my views, later on, after more careful reflection, but, as I look at the question, as I understand it, it would not have the effect that your question indicates. I did make inquiry into this particular question. I do not know the amount (at least I do not recall the amount) that was found to be interstate which was supposed to have been state business.

Q. Well, I was not calling for the fact from you, but I was asking you to assume it to be a fact that the local business was cut in two, both as to the volume and earnings, and without distinction of character at all, as suggested by Mr. O'Brien, if that would not be a factor which would have a tendency of calling for higher local rates. I understand that the volume of the intrastate business is a factor to be taken into account in making rates; now, if you have a given volume, that would be one condition of affairs; if you cut that volume in two, would there not, necessarily, be another condition of affairs? That is what I want your opinion on.

A. Well now, I am not prepared to answer your question. In regard to your first question, I think I am sufficiently advised of the facts to enable me to give an answer,—which, as I view the question now, satisfies myself, anyway. This difference between the amount of freight now found to be interstate and what it was thought to be at first, is freight which was moved forward by the Northern Pacific Company (and I am confining my answer to that particular company) on rates provided in the Minnesota schedule or the same rates upon which it moved intrastate traffic as its proportion. Now, that freight was necessarily moved under the same conditions and at the same cost to the Company as the intrastate freight; and I am unable to see how that would make any difference. You simply transfer that amount of freight and the cost of moving it over to the interstate side of the question, and you leave the intrastate freight a less amount moved, but at the

same cost per ton per mile or upon any other basis you see fit to put it; and, as I view the question now, that would not make any difference. That question is based upon the fact (or my knowledge of the fact) that this freight is more or less intermingled all the time, frequently moved in the same car, more often in the same train, and while I might change my mind, I can't see that it makes any difference.

Q. Well, of course, that isn't what I asked you about. I asked you to assume, Mr. Staples, that the volume of intrastate business is just half what you supposed it was—disregarding this explanation that you have now made—whether or not that fact would not call for higher rates; and we will take up the matter of the particular thing, later on. I want first, the general rule about it, if I can get it.

A. Well, as I see the question now, I shall say no.

Q. Suppose you double the amount of intrastate business, would that call for any lower rates or have a tendency to,—of each kind?

A. I am inclined to think not, if you took that traffic from the interstate and transferred it to the intrastate.

Q. Suppose it was all local, would that make any difference? I just want to get at the rule, to see whether the volume of the local business makes any difference at all in the matter of rates.

A. Naturally the volume of business, one must concede, makes a difference; but I am unable to see, just now, that it makes a difference in the cost of moving a ton of freight, locally, whether you transfer it from the interstate to the intrastate column or not.

Q. In your schedule of class rates the first figure for five miles is 12 cents per 100 pounds, if my memory is right; am I right?

A. I think it is.

Q. What does that cover?—a five-mile haul, doesn't it, and

loading and unloading at terminals?

A. Yes, sir.

Q. It covers two terminals and a five-mile haul, doesn't it?

A. Yes, sir.

Q. Interstate business that passes through the state is not loaded or unloaded in the state, is it, as a rule, especially if it is carload lots?

A. Not if it passes through the state.

Q. There is some such in the state?

A. Yes.

Q. All interstate business originates or terminates outside of the state?

A. Yes, sir.

Q. And has at least one terminal service outside of the state?

A. Yes, sir.

Q. And to that extent the property of the company within the state is relieved from the burden of that use?

A. Yes.

Q. Now, wouldn't it make some difference, Mr. Staples, in the schedule of rates, to markedly change the volume of business that is local to the state? Wouldn't it make a difference in almost every factor entering into the cost of the service, (the degree of use of the property,) as between the two kinds of business and all that?

A. Of course, there is no doubt, Mr. Butler, that a road with a tonnage of a hundred thousand tons of intrastate business, and doing no other business, ought to do a business of 200,000 tons, and taking the average of all kinds of freight which a road necessarily has to transport at a lesser cost, there is no doubt of that; but the case in point seems to be simply a question of whether the transferring of a given amount of freight from the intrastate to the interstate column makes the cost of moving the remaining portion (which is in-

trastate) higher or greater to the company than it would have been without making the transfer. I take it that is the question, and I am unable to see that it does.

Q. That isn't the question that I have asked you.

A. Well, then, I misundertand what you are trying to get at or fail to understand.

Q. You have been over that a number of times.

A. Yes, I know it.

Q. Well, I am not intending to ask you the same thing over and over again.

A. I don't know, you have, a good many times, Mr. Butler.

Q. We will leave the subject if we can't understand each other. In your schedule of September 6, 1906, you authorised a difference of 5 per cent between the terminal rates and the distance rates; upon what considerations is that difference based?

A. Well, there were different considerations, Mr. Butler, but I think the chief one, at least the one which presents itself to me now, in the strongest light, as I remember the consideration of that question, was that terminal rates are rates which govern to or from a terminal point (which means a distributing point) generally following a considerable market, and that the benefit which comes to both the carrier and the public is sufficient to warrant making a lower rate to and from such point than would or should obtain between two small points neither of which would be a terminal, and which ordinarily involves the company in more expense. The item of switching, perhaps, is a factor; the terminal facilities are always very much better at what we ordinarily call a terminal point, the ease with which a company can handle the traffic, the volume of traffic which moves to and from such a point are perhaps factors also.

Q. How did you get at the five per cent?

A. It is arbitrary.

Q. Purely, isn't it?

A. Purely.

Q. There is no way in the world to figure the difference of cost, is there, between doing the terminal business and the distance business?

A. Oh, well, I wouldn't want to say you could not approximate it, but I will say, frankly, there was no undertaking to do so.

Q. The difference of cost is not uniform either. Does it not vary very much?

A. Where?

Q. Well, between two instances. The difference might be greater than five per cent in some places and less (if ever less) in other places; it might be many times more than five per cent under some instances and much less than that under others?

A. Well, I don't really understand whether you are referring to movements between points neither of which is a terminal exclusively.

Q. Yes; that, in some instances, might be double the cost to the company of the service between either one of these points and a terminal for like distance, might it not?

A. Well, I hardly think so wide a variance, but there might be a difference.

Q. Yes, then the variation of cost is not uniform but variable, in a wide range, isn't it?

A. No, I wouldn't say a wide range, but I think it would vary.

Q. Give us your judgment of range expressed in percentage.

A. Well, that would be a guess. I can't do that.

Q. Well, then, why not say a wide range?

A. Because I don't think it is wide.

Q. Well, what do you consider a wide range?

A. When I answered that question that way, I had in mind this fact, that if it is the case of switching out a car, it is switched out of a local train, and I am unable to think why it would cost very much more at one point than another, except that the sidings might be arranged so as to make it take a little more time to do it at one point than another, and that all takes up the time of the crew; there might be a case where the setting out of a car at some point, (just so happens) delayed a train so as to throw it off its schedule time, and, in that particular instance, it would materially increase the cost.

Q. In your direct examination you made some showing that the difference between the terminal rates fixed by the railroad companies themselves and the distance rates applied by them, was various in different circumstances and on different roads; now, I wanted to find out, if that was intended as a criticism, by what method of reasoning or construction can it be made uniform otherwise than by acting, as you did, arbitrarily?

A. It doesn't cost the Great Northern much, if any, more to my mind, to do local business, than it costs the Chicago Great Western, and the purpose was to make that uniform.

Q. By arbitrary action?

A. Yes, sir.

Q. So you think that arbitrary action of the Commission tending to uniformity is better than action by the railroad companies in the light of their experience?

A. Oh, I don't think that is a question of experience, Mr. Butler, at all. I don't think that experience would convince one company that it ought to have a twenty-per cent higher local rate than another company in the same territory.

Q. A question somewhat akin to this arose in the Cannon Falls case, to which you referred in your direct examination,

wasn't there? That was a grain rate to Chicago.

A. I didn't refer to that at all.

Q. Well, you are familiar with that case?

A. Oh, yes.

Q. The grain rate from the Twin Cities to Chicago through Cannon Falls was 7½ cents, or about that?

A. I think it was 7½ cents.

Q. And from Cannon Falls to Chicago it was 15 cents?

A. Yes.

Q. More than it would cost to haul it to Minneapolis and then from Minneapolis back through Cannon Falls?

A. Half a cent.

Q. And complaint was made by Cannon Falls to your Commission?

A. Yes.

Q. Representing the state parties?

A. Yes.

Q. Was prosecuted under a statute directing you so to do?

A. Yes, sir.

Q. And it resulted in a modification and in making the Cannon Falls rate just double the Minneapolis rate, wasn't it?

A. No, it made the Cannon Falls rate 14½ cents.

Q. Made the Cannon Falls rate just what it would cost to ship into Minneapolis and back to Cannon Falls, and no more?

A. Yes.

Q. So the view of the Commission was that, as far as cost was concerned, there was a very great difference between a movement between two terminals and a movement between a way-station and one terminal?

A. No, I don't think that was at all a factor.

Q. Don't think cost was a factor?

A. No, sir.

Q. You said it was arbitrary. Cost was not a factor

either, then, in fixing this five per cent which you fixed?

A. Well, I wouldn't like to say that it was a very vital factor, if any.

Q. Now, Mr. Staples, you think that there is more difference than that, don't you, in cost?

A. I think this: there may be a little more difference than that, and, maybe, more than a little, but there is so very small amount of that business that it is not a factor, and in most states they don't recognize it at all, and the rate will be the same between local points as between local and terminal points.

Q. Now, I want to call your attention to your Ex. 3-E, which is captioned "Statement showing terminal rates on merchandise of first class in effect on railways named prior to the order of September 6, 1906, and rates as prescribed in that order," the first column being the mileage; second, Great Northern; third, Northern Pacific; fourth, Soo; fifth, Great Western; sixth, St. Paul; seventh, Omaha; eighth, St. Louis; and ninth, the Minnesota rates; and I ask you whether or not the figures which purport to be the railroad company's own rates, before this order went in, were taken off of the same or different divisions of the same company; you have named no stations.

A. When you say "off the same or different divisions," I am frank to say I don't understand that.

Q. Take the Milwaukee road, you show a rate for 10, 15, 20 and 25, and so on miles, down to 300, going in steps of 5 till you get to 200, and then going in steps of 10, as your order is. Now, in the column marked with the name of the St. Paul company, you give certain rates which were taken from the tariffs of that company; were all those figures in that column taken from a tariff on any one division of the Milwaukee road, or were different divisions selected, resulting in making an apparently greater irregularity and inequality than would be

the case had you followed a single division of road? That is what I am trying to get at.

A. I would have to answer that that I don't know, Mr. Butler. I know this, the intention was to get, as nearly as possible, a fair illustration for the same mileage upon the different roads—the rates which they carried on first class merchandise.

Q. Well, I think this sheet that you brought in in your direct examination, which has not been marked, relates to information that I asked for, by interruption or something in that nature, during your direct examination; am I not right?

A. Yes, my instructions in getting out this sheet were to take in as I recall it now, all the stations on the various lines and branches of the Milwaukee company—

Q. Yes.

A. —so that no rate should be omitted.

Q. Well, is that what is done?

Mr. O'BRIEN: No, that is what is being prepared.

A. No, I think we have it here.

Q. I think it is here. Well, comparing that with your Ex. 3-E, I can't follow, on any one division, the figures that you have made for the Milwaukee road, and I want to find out whether those figures were made by skipping around and taking distances on the various divisions of that road, so as to have the result of making Ex. 3-E show greater inequalities than could be shown by taking the route along any single division of it.

A. If that is the case, it was never so intended, Mr. Butler. I can't say from what divisions, branches or main lines those figures are taken.

Q. Can you get at that information?

Mr. YAPP: Yes.

Q. What I want, Mr. Staples, is a list of the stations used

on the various roads which produced these figures.

A. Yes, I understand it. I think that can be done; can it not, Mr. Yapp?

Q. We will let you do that later. In reference to that exhibit you were asked to give the additions allowed in the rates of the railroad company for the hundred-mile-haul, from 100 to 200, and then again from 200 to 300; do you recall that?

A. Yes, sir.

Q. And then compare that with the differences allowed by your own tariff.

A. For the same mileage?

Q. For the same steps, 100 miles each.

A. Yes.

Q. And I think in each instance, if I remember right, the allowance that you disclosed in Ex. 3-E in the railroad tariff was less than your own for the same steps?

A. I am inclined to think it was.

Q. And lower in each instance,—the rate fixed by the Commission for the entire distance was lower?

A. I think that is substantially true. Not in all cases, it is substantially true.

Q. Well, it is, except in the case of that Milwaukee blanket, isn't it?

A. I think it is.

Q. That Milwaukee blanket that we failed to find the explanation of in your direct examination?

A. Yes, sir.

Q. So that the effect of the Commissioners' order was to take the slice off right at the beginning of the haul, wasn't it, so that it would cover everything that moved at all, practically, because nothing can move 200 miles that doesn't go over the 100?

A. Well, I hardly know how to answer that. The first

haul is substantially the haul that had governed on the different roads.

Q. And the allowance and the difference all comes in on the cut on the first hundred miles, doesn't it, as that table shows it; that is clearly deducible from Ex. 3-E, isn't it, because the allowance by the Commission is more for the next hundred and more for the 200 and 300-step, so the whole difference must come in on the first, because you only go to 300 miles on that exhibit?

A. Yes.

Q. Isn't that so?

A. It is apparently so.

Q. And the effect of making the entire cut in the rates on the first hundred miles, would be to include the full amount of reduction on everything that moved as far as 100 miles and a little more?

A. No, I don't see it that way.

Q. At the distance of 100 miles, the Great Northern cut is something over ten cents, isn't it, according to this table?

A. 10.38.

Q. The Northern Pacific is the same, the Soo is the same, the Great Western is more, (13 and a fraction,) isn't it?

A. Yes.

Q. The Milwaukee is 14 and a fraction, isn't it?

A. Yes.

Q. No, we are subtracting that wrong. The cut on the first three is right?

A That is true.

Q. Now, take those same first three at 300 miles, the cut is only 7 cents; isn't that so?

A. That is so.

Q. There is a greater cut at the end of the first hundred miles than there is at the end of the 300 miles; isn't that so?

A. Yes, sir.

Q. And a greater cut at the end of 200 miles,—about the same?

A. About the same as the 100.

Q. So that, according to this exhibit 3-E, which is shown you, it would appear that everything that moved as far as 100 miles reached the maximum cut or reduction, wouldn't it? after that the advances are about alike?

A. It would appear that it is as high a cut for the first hundred-mile haul.

Q. As it is for the three hundred?

A. Yes. Yes, sir, comparing the rates.

Q. And the effect of that would be to catch all that moved as far as 100 at the first cut, wouldn't it, and a very much higher rate of per cent of cut, of course?

A. It would be some higher.

Q. Now, in making this table Ex. 3-E, as respects the Northern Pacific, would it be right to take the tariff for distances intermediate between Twin Cities and Duluth, for a part of the showing, and tariffs extending from Duluth westerly or from the Twin Cities westerly, for another part of the showing?

A. No, sir.

Q. That would be a manifestly unfair way?

A. It would not be a fair way to do it; and I want to say that I don't know what will develop, but there has been no such intention, so far as I have directed this, and I think I have directed pretty nearly all of it.

Q. From the sheet which you furnished I have tried to trace the Milwaukee rate, and I can't find the figures of Ex. 3-E on any one division of that road.

A. Well, I think, of course, they can be found.

Q. They may be there on that paper, I don't say they are not, but I haven't found them. Fifty miles from Duluth in the direction of the Twin Cities on that line, doesn't take the same

rate as fifty miles westerly, or 100 miles, does it?

A. Well, I am unable to answer, Mr. Butler. You are speaking of first class merchandise?

Q. Yes, to get at the scale. That is, isn't that Twin City-Duluth situation peculiar, and doesn't that affect intermediate points?

A. I was just about to say that, but just exactly how it affects intermediate points I do not know. I will say that that has not been a factor with the Commission. We have recognized that there is a very different relation between these two points than other portions of the state, and they have been a very minor influence in any part of this rate question, and if they have been used at all it has not been with my knowledge.

Q. Now, take the short distances out of the Twin Cities, they scarcely furnish a proper basis for a comparison for the purpose of getting at inequalities, do they, because Coon Creek takes the same rate from St. Paul as it does from Minneapolis, doesn't it?

A. Yes, sir.

Q. And it is more than twice as far, isn't it?

A. Yes.

Q. And ought to take the same, oughtn't it? and in so far as that is on a mileage basis purports to show inequalities, doesn't it?

A. Yes.

Q. Now, that isn't fair, is it?

A. No, I think that distance should be measured from the Transfer.

Q. Now, Ex. 8-F is captioned "Percentage relation which the different classes of merchandise bear to the first class as established by Northern Pacific Railway and as prescribed by order of the Commission." The purpose of that exhibit is to confirm the correctness of the classification fixed by your Com-

mission by the classification theretofore in vogue, or is it to criticise the classification theretofore in vogue, show that it is improper and unfair?

A. No, in the opinion of the Commission the classifications in that respect, while they were not exactly uniform, were so nearly so that they furnished a very good guide for the relation established by the Commission, and the intention was that the relation should be disturbed very little, none more than necessary, except with reference to class 5. That was changed by giving the rate a higher relation to Class 1, than had been the practice of the companies. And the practice was quite uniform by all companies.

Q. With that exception, it was the aim of the Commission to adopt the relation as nearly as could be gotten at by considering that that had been maintained by the railroads?

A. Yes, sir.

Q. So that, this exhibit, then, is confirmatory of the practice?

A. Yes, sir, it was made really to show the authority or the considerations which influenced its making.

Q. Under the blanketing rule, arising where the long line meets the short-line rate to competing points, is it customary that railway companies meet it as respects some class and not as respects all, or is there any custom about it, one way or the other?

A. Well, I will segregate the commodity.

Q. I am speaking of the class schedule alone.

A. (I didn't understand.) I think that it is universally the rule that, where a company goes out of the business, they go out of all of it.

Q. In the classes?

A. Yes, sir.

Q. That is not true in the commodities?

A. There would be no reason why they should, and I do

not think that it obtains in the case of commodities.

Q. Is there any reason why they should as to the classes? Why can't they meet as Class E, if they want to, and not as First Class and blanket?

A. Well, I think the companies elect, themselves, to go out of the whole business.

Q. You think it is their practice?

A. Yes.

Q. But you know of no reason why they might not stay in the business in some of the lower classes and keep out of the higher classes, do you?

A. Well, that question has never been raised or presented. I am rather inclined to think that they might be allowed to do it.

Q. And if they did, of course, and you commenced to check up that way, you would get paper inequalities again, wouldn't you?

A. Yes. I say, however, that I do not think such a rule obtains with any companies.

Q. Now, under your schedule the rules of the Western Classification permitting divisions and multiples of the class rates are permitted; for example, it is in evidence here, in the Minneapolis & St. Louis case, that certain things take above the rate of a certain class, and certain other things take once and a half, etc.

A. Yes.

Q. Making, in effect, as I counted them, twenty-two different schedules, if applicable now, under your—

A. That is a part of the classification, Mr. Butler, which is our classification.

Q. And is a part of your order?

A. Yes, sir.

Q. That is the way I understood it. Now, it can't be said that the relation of rates on these twenty-two different classes

is based upon the relation of cost of doing the business under each class, can it?

A. No, I wouldn't so claim, Mr. Butler.

Q. That cannot be claimed or justified?

A. I don't think so.

Q. You don't think the human intellect has got to such development that it could figure out the cost, do you, or the relation of it?

A. Not if you class me as a part of it.

Q. Now, those classifications are the result of commercial conditions, the result of growth for a long time?

A. Yes. When you say that, I presume you mean the classification.

Q. The Western Classification.

A. Yes, yes, sir.

Adjourned until Friday morning, March 5, at 10 A. M.

FEDERAL BUILDING, St. Paul, Minn., Friday, March 5, 1909.

The hearing was resumed at 10 o'clock A. M.

CHARLES F. STAPLES,

recalled for further cross-examination, testified.

By Mr. BUTLER:

Q. Mr. Staples, as respects Ex. 3-E—Staples, the statement showing terminal rates on merchandise of first class in effect on railways named prior to the order of September 6, 1906, and rates as prescribed in that order, are you able to state whether or not the railroad rates of each company indicated upon the exhibit, for the distances set opposite to them, were taken from the same or different divisions of each road?

A. Yes, sir; they are not all from the same division or

line of the Milwaukee Road.

Q. Now, as to the other roads, are you able to answer as to the Great Northern and Northern Pacific?

A. I am able to give you the station from which each of those rates was taken. I have made an examination to see whether they have departed from one particular line in finding the rate which is found in Ex. 3-E; I can tell you the station from which each of those rates was taken.

Q. Then we would have to look at the map or tariff, or something, to find out whether the stations were on the same division, unless we happen to remember, wouldn't we?

A. Yes, but I think we can tell in a moment in most every case. I want to indicate how that statement was made and the purpose of it, (and I refer to Ex.-3—Staples.) I have here the original from which that exhibit was made. That exhibit was made in the office, by my direction, and it was made from this paper which I hold in my hand, and I made this copy myself, something between three and four years ago. It was made during the investigation into this general rate question and was made for an entirely different purpose than it has been used for here, and contains more figures and data than is in that exhibit, but such data as is found in that exhibit is taken from this statement which I hold. Now, this statement, while as I indicate, I made it myself, for my own use and for an entirely different purpose than it is used for here, was made by taking the rates from some tabulations which were made prior to the making of that statement in our office, practically made under my direction, and was made for use in this rate question or as one of the tabulations we made for different purposes; and in making up this statement (which covers I think all the roads in this litigation) the directions to the clerk were to establish a key, taking first, a ten-mile haul, then fifteen, twenty, twenty-five, thirty, and continuing on the five-mile jumps up to 100 miles; then,

after that it is ten miles from 100 miles to 300 miles. Now, in making this statement, they were directed to find stations on the various lines (which are grouped together here and are composed of the Great Northern, Northern Pacific, Soo line, Chicago Great Western, Chicago, Milwaukee & St. Paul, Chicago, St. Paul, Minneapolis & Omaha, and Minneapolis & St. Louis) they were directed to find stations upon those various lines which fitted that key.

Q. That is, that was where the rate was nearest to the key established?

A. No, where the mileage would fit the key.

Q. I understand you.

A. There was no purpose in finding a high rate or a low rate. That wasn't the object at all, it was to find a rate to a mileage upon that system that would fit the key.

Q. That is, nearest to the five or ten-mile step, as the case might be?

A. Yes, sir. Now, in doing so, it was found necessary, in cases where they could not find a station on one particular line,—

Q. At a given distance?

A. At the distance given to fit the key, to go on to another line. Now, I never had any knowledge at all upon what lines or branches they did find these stations, but I will illustrate just a little further. Take, if you please, Ex. 3-E, and you will find just exactly how it was done. I will confine myself to the Milwaukee road, and can answer as to any others you may ask about. For the ten-mile distance, Newport was taken.

Q. On the river division?

A. On the river division. The 15-mile distance, Langdon.

Q. Same division?

A. Same division. 20-mile distance, Hastings.

Q. Same division?

A. Same division. 20-mile distance, Farmington.

Q. I. & M. division?

A. I. & M. Now, for the reason that there was no 25-mile point on that first division (the Milwaukee division) the 30-mile station was Etter, back on to the Milwaukee division again.

Q. The river division?

A. Yes, sir. The 35-mile point departs from either of those two, it goes over to Elko, on the Mankato line. The 40-mile station is Red Wing, back on the river division; the 45-mile station is Northfield.

Q. On the I. & M.?

A. On the I. & M. The 50-mile station is Glencoe.

Q. On what division is Glencoe?

A. The Hastings & Dakota.

Q. That makes the fourth division, so far?

A. Yes. The 55-mile station was Sumpter, on the H. & D. The 60-mile is Faribault.

Q. I. & M.?

A. I. & M. 65, Cannon Falls.

Q. And that is a branch?

A. That is a branch line.

Q. That is a branch that begins at Faribault and runs to Red Wing, isn't it, down the Cannon river?

A. Yes, sir. The 70-mile distant station is back again on the river division, Lake City. The 75-mile distance is on the Hastings & Dakota, at Buffalo Lake; 80-mile, Hector same division; 85-mile, Mankato; 90-miles, Bird Island.

Q. What division is that?

A. The Hastings & Dakota. 95, Olivia, the same division; 100 miles, Minneiska; that is the river division.

Q. And the 100-mile rate happens to show lower than the 95-mile rate? 95 miles is 38 on first class, and 100 is 36?

A. Perhaps so, I couldn't say. 110 miles is Homer; that is

on the river division; 130 miles, Granite Falls.

Q. That is on the H. & D.?

A. Yes, sir. 130 miles, Meyers, same division; 140 miles, Watson, on the H. & D.; 150 miles is Milan; 160 miles, Appleton, same division; 170 miles, Huntley, on the I. & M. division; 180 miles, is Ortonville, H. & D.; 190 miles, Welcome; it is in the southern part of the state. 200 miles, Alpha, southern Minnesota. When you get these long distances it must depart from the main line in order to get them at all.

Q. Part main line and part branch, probably, in most of the instances on the longer distances?

A. Yes, sir. 210 miles, Jackson; that is the same division; 220 miles, Lakefield, same division; 230 miles, Okabena, same division; 240 miles, Kinbrae, same division; 250 miles, Fulda, same division; 260 miles, Iona Lake, same division; 270 miles, Chandler, I think the same; 280 miles, Hatfield; 290 miles, Airlie. Now, I can't give the stations from which the rates were taken for each road, but it was made up upon the same plan and I do not know any other plan upon which it could be made and show rates upon each road; and in few instances does the blanket question cut much figure, so far as I have studied it. The only other way to make it would be to take all the rates they have upon the different lines for the different distances and (you might) average them or (you might) have them all before you,—I wouldn't hardly know how to utilize them.

Q. Well, take, for example, the rate to Kinbrae, 260 miles from the Twin Cities, and compare it with a like distance on the Soo in Minnesota, if there is such a like distance, it would not have very much significance, would it, Mr. Staples?

A. In what respect?

Q. Touching the matter of equality of rates as affecting public interest.

A. Why, you might cite specific instances in which that is true, and it may be true in this case.

Q. A difference of four or five cents on first-class, for example, would not call for correction by the Commission nearly as quickly as a like difference would on the Omaha road at the town opposite Kinbrae, where the distance is not the same, to be sure, but Dundee, on the Omaha road, is about two miles away from it, the distance, of course, to the Twin Cities is about sixty miles shorter by the Omaha; now, a difference between rates from Twin Cities to Dundee, on the Omaha, and Twin Cities to Kinbrae, on the St. Paul, notwithstanding the difference in distance varies about fifty miles, would be very much more important, from the standpoint of the public affected by the rate, than would be a similar distance on the line of the Northern Pacific or Great Northern from the Twin Cities extending towards the northwest part of the state?

A. I think there would be some difference.

Q. Well, in one case you have told us, as I understand you, that Dundee and Kinbrae, notwithstanding the difference in distance, ought to take the same rate, and in the other case the rate to Kinbrae and Dundee would not have any effect on the question at all, would it, compared with the Great Northern and Northern Pacific, for instance?

A. Well, Mr. Butler, while I have said that, don't misunderstand its application. If the companies in establishing the first-class rate did not exceed the maximum, the Commission would make no order that the rates should be the same, that would be left to the companies; but I have said, as a practical proposition, the companies themselves would equalize those rates, and if they didn't do so there would be an injustice done.

Q. An unjust discrimination?

A. I am speaking now of the distance you pointed out in the southern part of the state.

Q. It would amount to an unjust discrimination, wouldn't it, and be a proper matter for the Commission to act in and

equalize the rates on the parallel roads serving the same territory, the very same field?

A. Well, that might be true, but I think the Commission would feel itself rather embarrassed to come in and order one line to carry at a lower rate (by a separate and special order) than was carried in the order of merchandise rates (so-called maximum merchandise rates) which had just been made by the Commission.

Q. And would the embarrassment be so great that the injustice ought to be permitted to remain?

A. Unless the Commission could use moral suasion I do not believe an order would be made.

Q. You think that the embarrassment following the making of the rates and order would overcome the benefits, or the justification of the order would work out in a given instance?

A. No, I didn't exactly say that, but I think the Commission would occupy an inconsistent position.

Q. In what regard?

A. Why, by turning right around, after an order had been made promulgating reasonable maximum rates, and ordering a carrier to carry at a very much lower rate.

Q. But it would be justified in using the "moral suasion" of the Commission?

A. Yes, and no doubt would do so.

Q. To the fullest extent of that particular suasion?

A. Well, in a reasonable way, yes.

Q. Yes, I mean in a proper way.

A. Now, Mr. Butler, in connection with this same matter, I do not recall whether you asked this to be done or not, but it is immaterial; I directed it to be done, for my own information. I haven't seen it; you are entitled to just as much benefit—

Q. Neither have I, I don't know what subject it relates to.

A. Well, to this same subject we are now on. I will hand

you one of the sheets. I asked the office to prepare a statement for me covering the different lines involved in this litigation showing the first-class rates to the different stations on the main lines. They informed me last night that it would not be possible to get that statement for me to-day but that they could complete it as to some of the lines, and when I confined it to the lines which are particularly at issue, as I recall it, the Great Northern, Northern Pacific and the Minneapolis & St. Louis. The statement is headed "First Class Rates and Actual Mileage from Minnesota Transfer to Points on the Great Northern, Northern Pacific and Minneapolis & St. Louis Railways, respectively, and the Commissioners' rates for the same Distances," and I wish to explain, Mr. Butler, in connection with Ex. 3-E—Staples, that those distances are taken from Minnesota Transfer to the various stations named, and this is made upon the same basis. Now, I am not offering this, but if it is of any use to you, you are welcome to it.

Q. Thank you very much, I will examine that.

A. You asked me to have the rates checked in upon soft and hard coal to the stations on the border line of the state, and I have had that statement verified.

Q. That is one that Mr. Flinn furnished us that we introduced into the record?

A. Yes, sir.

Q. Are there any corrections to be made?

A. There were one or two of them.

Q. If there are any figures in that that ought to be changed, if you will call attention to the point and the commodity and the loss, that will make the record clear; the substance of that statement went right into the record, and now the corrections will have to go in in a similar manner. No change in the Minnesota rates?

A. No, but in connection with that statement, Mr. Butler, I asked the office to give me the rates from Chicago to the points

on the Chicago Great Western line, the Chicago, Milwaukee & St. Paul line,—

Q. Well, I didn't call for that, I guess, did I?

A. No, but I think that it ought to be shown.

Q. Perhaps a good way to do that would be to leave it to your counsel in re-direct.

A. Very well.

Mr. O'BRIEN: In this connection, it is proper to state, so that the matter will be clear, that the sole purpose of Ex. 3-E—Staples is to show that the Commission, in establishing the schedule of rates found in their order, and the legislature, by Chapter 232, in establishing a schedule of rates, followed the system then in vogue upon the railway companies; and that is shown as well by Exs. 3 and 5 attached to the supplemental bill of the Northern Pacific Railway Company in this controversy. The only difference, as I understand it, between Ex. 3-E—Staples and the exhibits attached to the Northern Pacific bill, is that Ex. 3-E—Staples refers to all of the roads, and the exhibits attached to the Northern Pacific bill, naturally, are confined to that road.

Mr. BUTLER: And give the stations against the mileage?

Mr. O'BRIEN: Yes, Ex. 3-E gives the stations in referring to the class rate; exhibit 5 does not, but is prepared exactly upon the same principle, as I understand it, as Ex. 3-E—Staples, and I don't understand that there is any discrepancy between them upon that point, and we simply have prepared and offered Ex.3-E for the purpose of making that matter perfectly clear to the Master at this time.

Q. It is true, is it not, that a most essential factor in rate-making is first, to find, as nearly as possible, the cost of doing the business—and that is something as yet little considered in rate-making?

A. I would answer that yes, but when I say yes I do not mean that the question of the cost is little considered as a

necessary factor; I mean in that answer that a definite and accurate means of determining the cost has, so far, been not neglected but not proceeded with so that an accurate measure has been found or an accurate means or definite way of determining the cost; I didn't mean that the cost itself hadn't been considered as an important factor—a necessary factor.

Q. One of a group of necessary factors?

A. Yes.

Q. Now, may it be stated about this way: "Primarily when undertaking to fix reasonable rates, the first factor is to find approximately the initial and terminal cost of handling the traffic, this always involves handling and the delay and use of the cars at two terminals. The rate per ton per mile for straight-away haul should be constantly decreasing till it reaches a point as low as it is reasonable to require the traffic moved for. Rates should be fixed as minimum rates and fixed high enough to allow a sufficient margin to meet short-haul rates or other competitive conditions." Is that the truth of it?

A. That is what I meant when I made that statement.

Q. You mean it yet, don't you?

A. I mean it yet.

Q. Now, Mr. Staples, the allowance made for what you call "straight-away haul" in the class rates, after you reach the point of 200 miles, is just half as much for the next 100 as it is for the first 200, in each instance, is it not, the amount added per mile to cover the straight-away haul, the amount for the terminal cost of handling being included, in each instance, in the first figure under each class for the five-mile distance?

A. Well, the amount of the terminal cost,—

Q. Both terminals?

A. —both terminals, would necessarily be included in any rate.

Q. Yes, in the first distance of any rate?

A. Yes, sir.

Q. And so with additions, then?

A. Well, I wouldn't say on the first distance; of course it is, on the first haul.

Q. In the first distance, no matter how short a distance, you have to have a rate in, all the elements of a rate?

A. Necessarily that follows.

Q. So, then, the additions beyond that are the amounts determined by the Commission to be allowed in maximum for the straightaway haul?

A. Well, I am not willing to say yes to that. It may appear that way; I may not be able to dispute the claim that, logically, that is true. That would not change—

Q. Well, logically it can't be otherwise than true?

A. Well, I agree to that, but as a principle I am talking now.

Q. Well—

A. Whether that is the governing principle or not I am not willing to subscribe to it.

Q. I am not asking for the principle but the allowance; I am asking for what has been done in this rate fixed by the Commission, and I am not asking whether it is right or wrong at all, I am asking for the fact. Now, it is a fact that, for each unit of distance, there is twice as much allowed for the straight-away haul, under each class, for the first 200 miles, as there is for equal distance for the next 200 miles to the point of 400 miles; that is the fact, isn't it, beyond any question, shown by the rates themselves?

A. My impression is that that is the fact.

Q. And then for the last 100 miles, from 400 to 500 miles, the allowance for each mile of straight-away haul is exactly one-quarter of the allowance for each mile of straight-away haul for distances under 200 miles? Do you want the tariff to look at?

A. Yes. (Witness is shown bill of complaint in the case

and table attached.) That would be true, Mr. Butler.

Q. And that is uniform as to each class?

A. Yes.

Q. The same percentage being maintained all the way through?

A. Yes, sir.

Q. Now, is not the selection of the point for the division of the amount per mile for the straight-away haul at 200 miles largely arbitrary; that is to say, could not 180 miles or 220 miles be about as well justified for making the change?

A. I think it could.

Q. As 200 miles?

A. I think it is arbitrary, except in this, Mr. Butler,—

Q. There are considerations indicating that there must be, somewhere in that vicinity, a point where there should be a substantial reduction of the allowance for the straight-away haul?

A. Yes.

Q. But just where that point is, is very difficult to tell and must be arbitrary, though enlightened somewhat by judgment; isn't that it?

A. Yes; I want to say, however, that in this matter while I cannot point to any tariff or schedule of rates which is made or built upon this plan exactly, in the making of these schedules all the schedules that could be brought to the attention of the Commission were studied; the schedules and methods of applying or extending the rates by the companies themselves were also studied, and an attempt was made to come as near harmonizing or establishing a rate upon a basis which would harmonize with the prevailing customs as possible. Not for a moment do I sit here and say this is right.

Q. You don't think it is, do you? You think it isn't right?

A. Well, I don't want to say that, Mr. Butler. Now, I don't hesitate to give you my idea about that at all, and I am

very glad to do it, not with the purpose of criticising this—

Q. No, but suppose we pass on a little further before we come to your generalization about that, and if I don't call it up to give you a chance to give your views, just remind me of it and I will, because I will do it if I don't forget it. Now, generally speaking, the schedule of rates in Chapter 232 are upon the same principle; included in the first rate for five miles is the terminal cost of handling the traffic and then for each mile there is added an allowance for the straight-away haul, and that allowance, the amount per mile, is divided after a certain point (speaking generally) about 200 miles, is reached?

A. Why, I think so, but I want to say that in the making of those rates the general principles by the different tariffs which had been made and which were recognized by the companies in their own tariffs were looked into, particularly with reference to the commodity rates.

Q. I am aware of that, yes. I would so assume without being so told. Now, we have just said that the selection of the 200-mile point for a division of the allowance per mile for the straight-away haul service is, in a way, arbitrary. Now, if a single road were to be considered by itself, eliminating in conception the existence of the other roads at all, it is probable that some other point for the first step of decrease for the allowance for the straight-away haul might be better, under the circumstances, than the 200-mile point and that these points, viewing each road separately, would vary a great deal with roads, depending largely upon their operating conditions, location of division points, manner of handling the traffic, and all that sort of thing?

A. Well, that might be true, but I think this, though,—

Q. Well, don't you think that would be true, viewing each road separately?

A. Well, I wouldn't like to say so. I wouldn't like to say so.

I think that it is fair to assume that you should take in 200 miles at any rate; I am satisfied, so far as I have studied the question yet, that you should cover 200 miles before you have reached the maximum economy in the matter of operation.

Q. But your schedule, if it is based on economy in operation, shows that half the allowance beyond 400 miles is right for the allowance for the same thing, as compared with the allowance between 200 and 400 miles, so that would indicate the conception that the maximum economy was reached at 400 miles, would it not?

A. Yes. Well, now, I cannot allow that to go into the record in that way and—

Q. Well, what I want fairly—

A. Don't misunderstand me, I want to offer an explanation.

Q. Well, I want you to explain, but let me ask you this, first—

A. All right.

Q. If you can answer it, and I don't insist on categorical answers, but I know you will answer it flatly, if you can. Now, that is the rule that the schedule itself evidences, (without committing yourself to whether it is right or wrong,) that the maximum economy is reached at the 400-mile point, because there the division is made allowing a quarter as much for the straight-away haul beyond 400 miles as is allowed in the first 200 miles?

A. Yes.

Q. So it is fair to say, isn't it, that the schedule itself is based upon the assumption, apparently, that the maximum economy is reached at 400 miles?

A. Yes, for the merchandise.

Q. For the classes?

A. Yes.

Q. Well, that appearing to be the fact with respect to what

the schedule itself indicates, do you want to give your personal views, Mr. Staples?

A. Well, it is more than a question of personal views, Mr. Butler. The extension of the schedule from 400 miles to 500 miles never was intended, and really is incorporated in there by a mistake on the part of a clerk. It is no purpose of mine to criticise anybody or take back the tariff itself; that is made apparent from the fact that the order which followed under December 14th, did not take in the distances from 400 to 500 miles, and, as I say, it was a mistake in understanding on the part of the clerk who made that extension.

Q. Well, it was made a part of the tariff?

A. That is true. That is true, and I am not trying to withdraw that part of the tariff at all, but I can't answer your questions without offering that explanation.

Q. Now, right there: As a matter of judgment, Mr. Staples, you would say, would you not, that the allowance for the straight-away haul evidenced in this tariff (the schedule attached to the bill of complaint here,) after the point of 400 miles is reached is altogether too low?

A. I do not want to answer that, because I don't know.

Q. You don't know?

A. But I will give—

Q. Now, can you tell me this: Do you not think that the relation of one to four for the allowance for the straight-away haul per mile, comparing one mile before the 200-mile point is reached, or the average of all before the 200-mile point is reached, to the average of all after from 400 to 500, don't you think that the relation of 4 to 1 is too much, that something is wrong with that thing?

A. Yes.

Q. That either the first allowance is altogether too high or the last is altogether too low? It is distorted, isn't it, on the face of it?

A. I think that the schedule between 400 and 500 miles is an error.

Q. Yes; and if that be regarded as being in the schedule at all and a part of it, then the schedule itself is unreasonable and distorted in its relation of one part to the other?

A. Not in its practical application.

Q. I will come to that in a moment, and Mr. O'Brien has reminded me of it, but I intend to come to that. But assuming, Mr. Staples, that traffic were to move the 500 miles and the schedule as it appears on its face were to be applied to the traffic of the railroad companies, it is distorted and wrong, isn't it?

A. It might be in its relation of the rates given to the parties served along the different parts of the line, but that is no indication that that would affect the revenues unreasonably which the entire system of rates would yield to the company.

Q. I was not asking about what effect the application of the whole rate made up in this manner would have, because if you put enough at the first end and required the last end to be hauled free, the whole might yield a fair revenue?

A. Certainly.

Q. That is obvious, but the schedule itself would be distorted, comparing one part with the other, would it not, unnatural, unreasonable and absurd?

A. Well, I have indicated that, to my mind, it could hardly be justified.

Q. Yes, it would be worse than that, wouldn't it? You would want to use stronger language than that about it, wouldn't you?

A. It is too late!

Q. Well, the question is answered satisfactorily. Now, Mr. Staples, as a practical matter, there is no single-line haul in Minnesota 500 miles, or any over 400, is there?

A. Well, 400 is practically the extent, so far as I know.

I am not sure, Mr. Butler, what the mileage might be. If there should be any haul say from Pipestone to St. Vincent, I don't know what that mileage would be.

Q. Well, in other words, it would be possible for somebody to consider the shipping of a bull from Pipestone around by the Minnesota Transfer up to Grampion?

Attorney General YOUNG: St. Vincent.

A. I think Mr. Hill might, but I don't believe anybody else would.

Q. There might be household movables, or something of that sort conceivable, a little of it, where it would be possible to get, in either schedule (though very rarely such a haul) a distance that would exceed 400 miles?

A. I say such a haul might be possible, but we do not regard it.

Q. But there would be substantially little traffic to take into account on that?

A. Yes.

Q. But 400 miles is about the maximum as a practical matter?

A. Yes, sir.

Attorney General YOUNG: That is the reason why the schedule was intended to be applied to 400 only.

Q. Now, I want to ask you as respects the allowance made for the straight-away haul in the commodity schedule included in Chapter 232 after the point where the lowest allowance necessary has been reached, whether you think that, as traffic moves on the railroads of this state, referring to intrastate traffic, such allowance—that is, the lowest in the schedule per mile for straight-away haul—is enough, speaking of the schedule as a whole.

A. When you say the schedule, as a whole, Mr. Butler, I assume you mean the schedule rates applied to the different classes or groups?

Q. Groups. I didn't intend to call attention to any one of the 17 or 16.

A. I didn't know whether you were referring to the schedule from five miles to 400 or crosswise.

Q. The lowest addition after you get to the low point, I want to know whether you think that is enough to be allowed. That is, taking into account traffic as it moves, the volume of the traffic, the circumstances of its handling and all that, whether it is enough, speaking generally of the seven classes.

A. I think your question confines, or permits my confining my answer, to the traffic within the state?

Q. Yes, sir, it requires it, I think.

A. Well, now, that necessarily takes in all conditions in the state under which the business is done, the character of the lines, the volume of the traffic, and my answer is yes.

Q. That is, now confining it to traffic in soft coal, eliminating the Duluth-Twin City intrastate soft coal, (because that is a peculiar situation and stands on its own bottom and unaffected by the schedule,) you think that 18 cents per ton for 100 miles is enough to allow for the straight-away haul of soft coal after the first 200 miles has been reached, considering all the roads, the volume and direction of traffic, the circumstances under which it moves, the value of the property, the use of it, and all those things? Now, that is a distinct question from the last and confines it to that single schedule.

A. If you desire that I eliminate all other rates, Mr. Butler, I will say no, and your question implies that I shall.

Mr. O'BRIEN: Twenty cents is all that the terminal rates established by the Northern Pacific is.

Q. Maybe they are not high enough; that is what they claim; they are trying to raise them as fast as they can all over the country.

Mr. O'BRIEN: Well, maybe they are not.

Mr. BUTLER: And I am asking Mr. Staples. Mr. Staples

thinks it is too low to pay for the moving of the coal,—do you not, Mr. Staples?

Attorney General YOUNG: If they were not hauling anything else?

WITNESS: Well, I am entirely satisfied with my answer, Mr. Butler. It is certainly clear.

Q. Now, take the hard coal. I haven't in mind the amount allowed for hauling a ton a hundred miles after you get to the lowest point. Do you think that is enough to pay for the just share of profits?

A. Now, Mr. Butler, in answering your question upon the matter of soft coal, I don't want to indicate that I took into consideration the question literally, as your subsequent question seems to indicate, but I used it in a comparative sense, and knowing, as I do, that the rate upon soft coal was made (I will say) particularly low compared with all other traffic, I don't feel that I can answer intelligently further and have my answer interpreted to mean that so many cents a ton ought to be allowed for a certain movement of a certain traffic. I can't answer that.

Q. Well, now, I will generalize about that, and I don't want to spend any unnecessary time about it.

A. I don't want to evade you, but I don't want—

Q. I don't want it otherwise than as you would have it.

A. I believe that, but I don't want to commit myself upon a proposition, Mr. Butler, that I don't feel qualified to commit myself upon.

Q. Now, do you feel qualified, Mr. Staples, to say, as respects this schedule in Chapter 232, whether or not the amount allowed for the straight-away haul, when the point where the lowest allowance for that haul commences, and from that on to the end of the distance covered in the tariff, is compensatory or not, taking them as a whole? Do I make myself perfectly clear?

A. Yes, you have; I understand you now.

Q. That is a very important traffic in the state?

A. Yes. I will say yes to that.

Q. Intrastate?

A. Yes.

Q. Comparatively a large volume of it. Now, I want you to consider that schedule and tell me whether or not you feel qualified to speak upon the point, to-wit, is the allowance for the straight-away haul sufficient?

A. Well, you have changed your question. I don't know that it changes the meaning at all.

Q. No, I didn't intend to change the meaning.

A. You have adopted another word, you say "sufficient" and once "compensatory". If you used the word "compensatory", as I understand it, I would say yes.

Q. Sufficient?

A. I don't know whether it is sufficient, Mr. Butler, if you eliminate the traffic under the 300-mile haul.

Q. 200, you mean?

A. Well, I thought you were confining yourself to 300 up to 400.

Q. The lowest point is reached at 200, isn't it, in these schedules,—about 200 in all of them? I mean to cover the whole allowance where the lowest compensation for straight-away haul is allowed in the rate. Are not those allowances, generally speaking, too low, noncompensatory and unreasonable?

A. No, I wouldn't say that at all.

Q. You think they are sufficient, compensatory and reasonable, or do you prefer not to speak upon the subject?

A. Well, I don't like to go into that. I have indicated here, three or four times, that I might build a tariff upon a different basis, but I haven't any question in answering that, in my opinion, the rates as a whole, are ample.

Q. Well, the fact that you subscribe to them and are in this lawsuit is proof of that, isn't it?

A. No, not necessarily.

Q. No, you didn't make these particular rates, but you made rates that are lower than seven per cent and a fraction?

A. Yes.

Q. It would therefore be assumed that it was your judgment that they were sufficient, wouldn't it?

Q. Well, yes, but I made them under conditions which existed, and these rates have been changed under changed conditions in the matter of revenue of the companies. Speaking now,—

Q. Well, there wasn't much change between December, 1906, when you made a lower schedule and April, 1907 when this schedule was made?

A. Yes, a change in the matter of the passenger earnings.

Q. Well, then, I will ask you the flat question: In view of the changed conditions, do you think that schedule right or reasonable, or fair or just or compensatory, or all of those things, in view of the passenger reduction?

A. So far as I have knowledge, Mr. Butler, upon the effect of the passenger reductions—the effect in the matter of revenue—I would say yes.

Q. Now, then, getting back to the other question, do you think that the allowance for straight-away haul after the low point is reached, is reasonable and just and compensatory?

A. You are speaking now, Mr. Butler, from 200 to 400 miles?

Q. Yes, practically 200; it is not a uniform point in that schedule.

A. Yes, I know that. I think it is.

Q. Taking into account the volume of the intrastate business, the direction of movement, the circumstances under which it is carried?

A. I take all that into consideration.

Q. You don't think you would be able to justify that as to any particular schedule of the seven schedules in Chapter 232?

A. Well, I do not know whether I would want to undertake to do so or not. They are considered as a whole.

Q. Are you familiar with this exhibit of Mr. Flinn's Ex.ZZ?

A. I said the other day, that I did not know anything of his exhibits, Mr. Butler. I have not examined them further than you have shown them to me.

Q. It is a statement showing "(1) Rate to Moorhead as per order of Commission, September 6, 1906, and beyond Moorhead on basis of rate per ton mile, earned under order of Commission on haul from St. Paul to Moorhead; (2) Present rates to same points voluntarily maintained by Northern Pacific Railway Co., and rate per ton mile allowed thereby." Now, confining you answer to what is first shown, to-wit, schedule of rate built up on the principle of adding for each mile hauled beyond Moorhead the average rate per ton per mile earned to Moorhead, I want to ask you if you ever knew of a schedule of rates being made that way in your lifetime, on that principle?

A. Yes.

Q. Which one?

A. Well, in this state some of the roads have schedules of rates made that way.

Q. Can you specify them so we can look them up? I want to know where to find them if I can.

A. Well, I don't know that I can, but I recall when the Omaha made its application, some two or three weeks ago, for permission to establish rates on threshed flax straw, they put in fixed rates on 25-mile jumps to the 100-mile point and then made the rate a specific number of miles per ton per mile for any distance beyond that.

Q. And was that the average of the first hundred? that is my point.

A. It was the average rate for the first 100 miles; and they desired to extend the rate in this application; it was provided that the rates should be extended upon that plan.

Q. That was this special matter to which you referred some time ago, this special commodity rate that you permitted them to put in?

A. Yes.

Q. Because the traffic was so poor that it couldn't stand very much?

A. Yes. I don't call that a special commodity rate. That is a rate. Well, when I say "special" I mean this: that there was no rate upon it and they desired to establish a rate, just as they have upon wheat, hay or other—

Q. Well, it is a rate not taking the stuff out of the classes?

A. Well, it never was in the classification at all. It is a new commodity—I will put it that way.

Q. It is a special rate, isn't it?

A. No more so than the rate on straw or hay or wheat.

Q. It is a commodity rate?

A. Yes, sir.

Q. Any others that you think of built that way?

A. Well, they pointed out at that time other rates. Now, I do not recall whether they were in Minnesota or in other states, or how many of them there were, but I recall that distinctly, and the Soo Road made application for extension upon that plan.

Q. Do you say that is or is not a well-recognized method of building a schedule of rates?

A. No, I wouldn't say that.

Q. There never was a general schedule of rates made on that principle that you ever heard of, was there?

A. Well, within a state (referring now to maximum sched-

ules of class rates which have been issued by different states) I have never seen that principle recognized, or that plan, I will put it; but in the extension of rates themselves for long distances I think it appears in different cases that, to a more or less degree, that would appear to be the basis.

Q. Well, now, do you think it would be a proper way to make an interstate rate from Detroit, Minnesota, to Bismarck, to take the state's distance or terminal tariff (Detroit is a terminal point) to Moorhead and average the rates per ton per mile for the haul in Minnesota, and then add that for each mile after you cross the Minnesota line?

A. I think this, Mr. Butler: that you might take, as you suggest, the rate to Detroit upon a particular commodity, and if you had reached the maximum economy in the matter of operation at that point and the conditions beyond Detroit were reasonably the same, it would be a very reasonable manner of extending a rate.

Q. Well, now, take the conditions as you know them to be from Detroit on and answer my question.

A. Detroit to what point?

Q. Bismarck. Go to the state line and read your schedule and find out what the tariff would be and then average the rate per ton per mile and multiply the mileage from the state line to Bismarck and add that on; would that be a good way to make rates?

A. Why, I think it would be a very great improvement over many ways that have been utilized.

Q. You think that would be an improvement over the way you made your schedule from 400 to 500 miles, don't you?

A. Yes.

Q. But don't you think it would be better than the way you made your schedule from 200 to 400 miles? now, in principle, comparing one part with another.

A. Expressing a personal view, yes.

Q. Your idea would be to go on until you reached what you think the low economy and then instead of adding a very low rate, add the average rate that was reached up to the point mentioned?

A. Well, "the average rate," Mr. Butler, I assume that you mean what I have stated, that you have reached a point where the economy of operation has been reached, that is reasonable maximum economy of operation has been reached.

Q. Mr. Staples, you have told me, as I read from the printed publication of your speech at the National Association of Railway Commissioners in 1907, this: "Primarily, when undertaking to fix reasonable rates, the first factor is to find approximately the initial or terminal cost of handling the traffic; this always involves handling and the delay and use of the cars at two terminals. The rate per ton per mile for straight-away haul should be constantly decreasing till it reaches a point as low as it is reasonable to require the traffic moved for. Rates should be fixed as maximum rates and fixed high enough to allow a sufficient margin to meet short-haul rates or other competitive conditions." Now, if that plan were followed for the long interstate hauls on the Northern Pacific road, beginning with the schedule made by the Commission, and not reducing any more than the Commission reduced for the straight-away haul up to the 500-mile point, it would make a schedule of rates for the long interstate distances that are absurd, and if applied would be destructive of the prosperity of the Road, would it not?

Mr. O'BRIEN: We desire to note an objection to that on the ground that the question is impertinent, scandalous and wholly immaterial; there can't be any question as to legal compulsion to do that; there can't be any question that the statements contained in an address are immaterial, and it can only be intended for the purpose of endeavoring to humiliate or belittle the witness.

Mr. BUTLER: I want to make one statement in view of the last remark. That which I have just read in this question from the speech is exactly in the same words which Mr. Staples has told me, this morning, are right as applied to the problem of making reasonable rates. Now, since then he has frankly and candidly said some other way would be a better way than that; he has also said that a mistake was made in that schedule as respects the rates from 400 to 500 miles. This question takes that in. Now, there is much testimony in this case, I think, on the part of railroad men, that according to their opinion the building of a schedule of rates on the principle of this State's schedule and extending it to long distances would be unreasonable and destructive of the prosperity of the Road. Now, I think Mr. Staples will agree with that, and if he does, it will aid the Master and the Court in determining whether or not the opinions of the railroad men who have testified upon that point are sound. Now, as to whether or not there be legal compulsion, that is a question that it would not profit much to discuss now.

Mr. O'BRIEN: Now, I insist, may it please the Court, that this objection is timely and ought to be entertained, because it will tend to eliminate a great deal of testimony which, to my mind, never could be considered. From the beginning of this case we have had a series of attacks made upon the method upon which these schedules were prepared; and, indeed, I know of no other question in the case except the question of the sufficiency of the rates and the question as to how the schedules were prepared unless we also have the question as to whether it was an interference with interstate commerce. I have endeavored, over and over again, during the case, to show that the schedules were prepared upon the same principle that the terminal tariffs of the Road were prepared, according as those tariffs were shown by the exhibits attached to the bill in the Northern Pacific case, but apparently was unable to impress that upon

the counsel or the Court until Ex. 3-E was presented here, which shows that those schedues were prepared exactly upon the same principle, and any criticism that could be made on them is because the methods of the companies themselves with regard to the additional amounts have been followed, and also with regard to the percentage relations between the classes have been followed. Now, under those circumstances, it would seem that the solemn statement of railroad officials as to what is or is not sound, in their judgment, upon a purely imaginary hypothesis, is impertinent to the issues in this case, and we wont be compelled to sit here and listen to it. We have, in addition to that, the testimony of the traffic manager of the Northern Pacific, Mr. Baird, who has explained the revision that was made in the Northern Pacific tariffs from Moorhead to Bismarck or from Fargo to Bismarck for the haul from St. Paul to Bismarck at the time that the schedule of rates was put in, and we checked it by the rates to Valley City, by the rates to Jamestown and by the rates to Bismarck, and, with a very slight variation, or a very small percentage, the evident principle upon which those rates were based was upon the extension of the rate per ton per mile from St. Paul to Moorhead, and that is shown by Ex. C; so that, if the officials of the Northern Pacific Company come in to state that that method is an unsound and impossible method, they state that a method is unsound and impossible which they have themselves voluntarily maintained for two years. Under those circumstances, it seems to me, may it please the Court, that the question as to the expression of an opinion by a witness at one time or at another time is wholly and entirely immaterial, and is so irrelevant to the issues in this case that it amounts to impertinent and scandalous testimony, as those terms are understood in courts of equity.

The MASTER: I hardly feel that I have a right to exclude the question if it is insisted upon. The matters urged by Mr.

O'Brien may be a good excuse for Mr. Staples at one time having taken that position if it is a wrong position. It may be that he is not prepared to stand by that statement that he made at some other time in regard to this same matter. I will not exclude the question, I am inclined to think it is proper cross-examination. (Last question read.)

A. I don't know.

Q. Do you think it would be a reasonable schedule?

Attorney General YOUNG: That question, it seems to me, is unfair, in view of the fact that Mr. Staples has explained that the rate provided for distances from 400 to 500 miles is in the tariff by error, it was not intended to be incorporated.

Mr. BUTLER: My next question will ask him his opinion, based on the matter, assuming the schedule to be only for 400 miles. I wanted to take his answer on this first, and then I intended, by my very next question, to have the schedule considered as he says it ought to be considered.

Attorney General YOUNG: Well, why include this, inasmuch as that tariff is not in there properly and there is no haul in the state of Minnesota to which it would apply?

Mr. BUTLER: I think it is proper.

Attorney General YOUNG: It can't be answered intelligently, it is an erroneous schedule, added by mistake.

A. I don't just get that, Mr. Butler.

Q. To extend the principle of your schedule of long distances on the Northern Pacific, adding for distances above 400 miles an allowance for the straight-away haul equal to that which your Commission in its schedule fixed as an allowance for such straight-away haul above the 400 miles.

A. I don't know.

Q. Now, assume that the amount added for distances above 400 miles was the same as the amount allowed by the Commission for distances between 200 and 400 miles, and extended to the long-haul traffic of the Northern Pacific road, are you

able to form an opinion as to whether or not it would be a just or reasonable or compensatory schedule of rates?

A. No, sir.

Q. You can't tell about that?

A. Not at this time. I don't know when I could. I certainly would want a great deal of investigation. I do not know.

Q. Now I want to make the same question with reference to the commodity business, Mr. Staples.

A. My answers would have to be the same, Mr. Butler.

Q. That is, upon the same assumptions?

A. Upon the same assumptions, yes, sir.

Attorney General YOUNG: That is, you were not preparing schedules for the interstate business; you were preparing schedules for the state business?

WITNESS: Well, I didn't answer for reason that it goes beyond anything I have considered at any time in the matter, it is a matter I have made no investigation on.

Recess until 2 o'clock.

AFTERNOON SESSION.

RE-DIRECT EXAMINATION

By Mr. O'BRIEN:

Q. Mr. Staples, I can't give your exact language, but I understood you to testify, in substance, that your judgment as to the proper method of extending a given rate, where such extension was necessarily based upon the given rate, was to determine at what distance the greatest economy of haul was arrived at, and from that point on to extend the rate at the rate per ton per mile first found, or at the rate per ton per mile—

A. To that point.

Q. —to the point of the greatest economy.

A. Yes, sir.

Q. State whether or not that is upon the theory that similar conditions extend for the entire haul over which the rate is to be extended.

A. Yes. I said that this morning,—I have said it several times,—that you necessarily must consider the line over which the traffic must move and the conditions.

Q. Where the conditions change and the cost of the service is increased or diminished thereby, that principle might not apply, I presume?

A. Those would necessarily be factors that, if I were undertaking to make rates, would have to be considered before any application could be made.

Q. Now, your attention was called to a statement made by you in a public address, found on page 17 of the pamphlet in which the address is printed. It reads as follows: "Primarily, when undertaking to fix reasonable rates, the first factor is to find approximately the initial or terminal cost of handling the traffic. This always involves handling and the delay and use of the cars at two terminals. The rate per ton per mile for straight-away haul should be constantly decreased till it reaches a point as low as it is reasonable to require the traffic moved for." Will you state whether or not that statement expresses any different thought in your mind from the one which you have expressed in answering my former questions.

A. Not any.

Q. You read into the record the old rate and the new rate at certain points located upon the borders of Minnesota, I believe,—

A. Yes, sir; I am not sure whether the first-class rate was included or not, but it covered all the commodities covered by the commodity-rate act.

Q. —and were asked as to whether or not materially different rates to points immediately contiguous and just beyond the border line of the state could be justified.

A. Yes, sir.

Q. Have you, since those questions were asked, ascertained the actual rates pertaining to some of those points upon coal, from Chicago, for instance?

A. Yes; at Mr. Butler's request I had this statement checked up or verified.

Mr. BUTLER: When you define "this statement",—I didn't ask anything about Chicago.

WITNESS: No, I am not speaking of that; I am talking about this statement which is the subject of Mr. O'Brien's questions.

Q. That is the statement as to coal rates which you read into the record on cross-examination?

A. Yes, sir.

Q. After so reading it into the record you took the statement and checked it up, you say?

A. I had it checked up at the office, and I asked the clerk to indicate to me the coal rates from Chicago, particularly to points on the southern line of the state; confining it to that because of the fact that coal rates to northern points from Chicago would have no place here at all, if there are such rates; I didn't even inquire whether there are.

Q. Well, will you please now read into the record the information with reference to those stations to which such Chicago rates apply?

A. Yes, sir.

Q. And I notice that they are some of the same stations referred to on cross-examination.

A. They will be the same stations.

Mr. BUTLER: In Minnesota?

Mr. O'BRIEN: Yes. Not all of the same stations, but some of the same stations.

WITNESS: Well, covering some of the stations and not covering any other stations than those referred to in the exhibit.

Q. Give the name of the road, giving all the rates.

A. The statement showing rates from Duluth to certain points on the line of the Chicago Great Western Company includes Taopi, Minnesota, hard-coal rate, $2.25 per ton, under the old tariff; under the commodity act that is made $1.72 per ton; the rate from Chicago to that point on hard coal is $2 per ton. The old rate on soft coal was $1.40 per ton; the new rate $1.37 per ton, and the Chicago rate to that same point is $1.40 per ton.

Q. Bailey, Iowa?

A. Bailey, Iowa, old rate, $2.25; new rate, $2.25. That is hard coal. The Chicago rate on hard coal is $2 to that point. The rate on soft coal from Duluth, old rate, $1.40; new rate, $1.40; the Chicago rate is $1.40. To Lyle, Minnesota, on hard coal, old rate, $2; new rate, $1.72; rate from Chicago $2. Old rate on soft coal was $1.40, new rate, $1.37; rate from Chicago $1.40. Milton, Iowa, (across the line) rate on hard coal, Duluth, $2; new rate $2; Chicago rate $2; soft coal, old rate, $1.40; new rate, $1.40; Chicago rate $1.40. Leroy, Minnesota, old rate, $2.25 from Duluth, (hard coal); new rate, $1.94; Chicago rate, $2; the old rate, on soft coal, $1.40; new rate, $1.56; Chicago rate, $1.40.

Mr. BUTLER: What is the use of saying new rate would be $1.56? how could that be under the act? Wouldn't it be $1.40? You can't raise it, can you?

Mr. HOW: That is an interstate point.

Mr. BUTLER: Yes, that is right.

Mr. O'BRIEN: No, you are right about that. That was explained before; I suppose that will be always understood.

Mr. BUTLER: Yes, the new rate would be $1.40, though on a mileage basis it would be $1.56.

Mr. O'BRIEN: On a mileage basis it would be $1.56, but it would be actually $1.40.

WITNESS: David, Iowa, old rate from Duluth on hard coal,

$2.25; new rate, $2.25; rate from Chicago $2; from Duluth the soft coal old rate is $1.40; new rate, $1.40; Chicago rate, $1.40. Now, on the line of the Chicago, Milwaukee & St. Paul Railway Company, taking the station of Reno, Minnesota, the old rate was $2.25 on hard coal; new rate, $1.92; the rate from Chicago, $1.75. The rate on soft coal from Duluth, old rate, is $2.25; the new rate, $1.54; the rate from Chicago, $1.35. Dresbach, Minnesota, Duluth rate on hard coal, old rate, $2.25; new rate, $1.82; and the rate from Chicago, $1.85. On soft coal, same point, Duluth old rate, $2.25; new rate, $1.46; rate from Chicago, $1.35. The old rate on hard coal to Lyle, Minnesota, $2; new rate, $1.78; the rate from Chicago $2; on soft coal, old rate, $1.40; new rate, $1.42 (it reads $1.40); rate from Chicago, $1.40. Otranto, Iowa, rate from Duluth on hard coal, $2 (old); new rate, $2; Chicago rate, $2; old rate on soft coal, $1.40; new rate, $1.40; Chicago rate, $1.40. Airlie, Minnesota, hard coal rate, (old) $2.30; new rate, $2.50. There is no rate given here at all, the distance precludes a rate, (426 miles) that is, a rate by the tariff. It would be the same on soft coal. The old rate was $2; no rate put in, but the rate from Chicago is $2.30 on hard, and $2 on soft coal, just the same as it has been. Flandreau, South Dakota, is in the same situation. Flandreau, South Dakota, old rate on hard coal, $2.50; new rate, same; Chicago rate, same; old rate on soft coal, $2.25; new rate, $2.25; rate from Chicago, $2.50. Wheaton, Minnesota, old rate on hard coal, $2.40; new rate, $2.11; the Chicago rate, $3. The old rate on soft coal, $2 from Duluth; new rate, $1.69; rate from Chicago, $2.80. White Rock, South Dakota, old rate on hard coal, $2.35; new rate, $2.35; Chicago rate, $3. The old rate on hard coal, $2; new rate $2; the rate from Chicago, $2.85.

Q. Can you read into the record the direct mileage upon each road operating in the state of Minnesota from the Twin Cities to the point where such road leaves the state, where

there is a direct line from Duluth from that point to the point where the road leaves the state, and, in the case of the Chicago & Northwestern, from the point where that road enters the state to the point where it leaves the state?

A. I will undertake to do that, Mr. O'Brien. I have asked Mr. Yapp to prepare a statement for me showing the mileage. If I make an error we will correct it. The mileage from Minnesota Transfer, on the Great Northern road, to St. Vincent, 385 miles; East Grand Forks, 317 miles; Moorhead, 236 miles; Breckenridge, 208 miles; Childs, 199 miles; Nassau, 173 miles; Jasper, 213 miles. Mileage from Duluth to St. Vincent, 363 miles; East Grand Forks, 296 miles; Moorhead, 307 miles; Breckenridge, 279 miles; Childs, 270 miles; Nassau, 275 miles; Jasper, 315 miles. On the Northern Pacific road, mileage from Minnesota Transfer, East Grand Forks, 313 miles; Moorhead, 243 miles; Breckenridge, 229. Mileage from Duluth, Northern Pacific: East Grand Forks, 324 miles; Moorhead, 256 miles; Breckenridge, 242 miles. On the Soo line, mileage from Minnesota Transfer to Noyes, 392 miles; Oslo, 360 miles; Tenny, 189 miles. Mileage from Duluth on the Soo to Tenny, 346 miles. On the Chicago, Milwaukee & St. Paul road from the Minnesota Transfer, Ortonville, 184 miles; Airlie, 280 miles; Wabasha, 75 miles; La Crescent, 134 miles; Reno, 152 miles; Lyle, 116 miles; Leroy, 132 miles; White Rock, approximately 230 miles. Minneapolis & St. Louis, from Minnesota Transfer to Marietta, 188 miles; Dunnell, 152 miles; Natvold, 121 miles. On the Chicago & Northwestern line running from Winona, west to Burr and to Hendricks, approximately 250 miles. Chicago, St. Paul, Minneapolis & Omaha Railway, from the Minnesota Transfer, to Beaver Creek, 219 miles; Ash Creek, 218 miles, Bigelow, 187 miles; Elmore, 141 miles. Chicago, Rock Island & Pacific, the mileage to Pipestone from the Minnesota Transfer is 299 miles, but I haven't all within Minnesota, and I don't understand—

Q. Where is the closest point to the Twin Cities that the road leaves Minnesota, what is the distance of that?

A. At Homedahl, 148 miles.

Q. Then the road runs through Iowa and comes back into Minnesota again and up to Pipestone?

A. Yes, sir.

Q. And the mileage to Pipestone?

A. By that way it would be 299 miles. Of course, that is the only way it can reach it. The Chicago Great Western, from the Minnesota Transfer to Lyle, 115 miles; and to Leroy 155 miles; Taopi, approximately 116 miles from the Minnesota Transfer.

Q. It has been suggested that higher grain rates are justified in the southern part of the state because of the difference in the tonnage hauled in that portion of the state in grain; have you prepared a statement showing the amount of grain and agricultural products hauled by the different roads in Minnesota?

A. Yes, sir.

Q. It is suggested that my question should have been have you prepared a statement showing the character of the tonnage delivered to each of the roads in Minnesota.

A. Yes, I have. I should have explained, of course, in my answer, the character of the statement.

Q. Will you please state what that statement is prepared from and, in your own way, Mr. Staples, fully explain the matter and read into the record such portions of that statement as you desire.

A. Well, in order to show the character of the traffic moved by the various companies, I have taken different means and have had prepared two statements. One of them I expect every minute, it isn't here yet; that will show the grain loaded at the different stations in the state of Minnesota outside the terminals by all the roads in this litigation. This statement is one

I had prepared yesterday, showing the tonnage, and is taken from the annual reports of the railway companies to the Commission for the year ending June 30, 1907. The basis of this statement is the tonnage of the different characters indicated here, loaded at the different stations in the state of Minnesota, whether it originated at those stations or not. That means that any tonnage which was delivered to the line at a connecting station, of the various characters indicated, would be included in this tonnage, and does not refer to the point of shipment. In other words, the Minneapolis & St. Louis line might deliver a carload of stock to the Great Northern Company at Hanley Falls, the stock may have been shipped from a point in Dakota, that carload of stock will not show in the statement of the Minneapolis & St. Louis company, but will show in the statement of the Great Northern company as stock which it loaded at Hanley Falls. My purpose of explaining that is that it doesn't mean that all the traffic originated primarily in Minnesota, but is traffic handled by the company and includes the traffic which was loaded locally and which was delivered to it at some station in Minnesota by another carrier.

Mr. How: Does it include interstate shipments other than those that come over two lines?

WITNESS: It would include any interstate shipment, without reference to where it came from, which was delivered to a line at some point in Minnesota.

Q. But would not include an interstate shipment originating upon the line of the Northern Pacific in Dakota and hauled by that road continuously to Minneapolis?

A. No, sir.

By Mr. BUTLER:

Q. Would it include a shipment like this: a carload of stock or grain originating on the Chicago & Northwestern road at a station in Minnesota and hauled a part of the way to the Twin Cities or Duluth by some other road?

A. As I understand it, that shipment would be included in the report of both companies.

Q. Yes. So there would be a duplication of tonnage as to all that?

A. Yes, I think so.

Q. The Chicago & Northwestern doesn't go to either Duluth or Minneapolis?

A. That is true.

Q. And this statement would include all the tonnage; it would include just double the tonnage from all points in Minnesota on that road; that is, it would charge it to the Northwestern and also charge it to the carriers hauling it to Minneapolis?

A. Yes, that is the way I understand it.

Q. And that would be so as to all similar situations?

A. Yes, that is the way I understand the compilation. The statement is divided up as follows: It shows grain and total agricultural products, which include grain, livestock and the products of livestock, hard coal, soft coal, the products of mines, lumber, forest products, miscellaneous and merchandise.

Q. Does it show tonnage destined to points outside of Minnesota which was loaded in Minnesota or received by a carrier in Minnesota?

A. I so understand.

Q. For instance, does it show the Chicago livestock—

A. I so understand it.

Q. —originating in Minnesota?

A. I so understand it.

Q. And grain and all its products?

A. I so understand it, if it was loaded in Minnesota.

Q. So, then, it is really not a statement of tonnage originating in Minnesota?

A. No, sir.

By Mr. O'BRIEN:

Q. Not altogether; it is either originating in Minnesota or has been received by some line for the first time in Minnesota.

Mr. BUTLER: And it doubles all the tonnage that originates in Minnesota and changes carriers in Minnesota?

WITNESS: Yes.

Q. The statement, as I understand it, is merely intended to show the character of the traffic upon the different roads?

A. That is the purpose of it. Now, the first column indicates the tons of the different characters of traffic designated.

Q. Well, you will have to read the statement into the record.

Mr. BUTLER: I think we will note an objection to this as impertinent and irrelevant. It does not seem that it could have any bearing upon anything unless it be made very much more specific than the description of the statement indicates.

The MASTER: Objection noted.

A. The first double-column covers the traffic of the Chicago & Northwestern Railway Company: grain (and the amount is always indicated in tons) 304,268 tons; the per cent of the entire tonnage of the road of grain was 38.57 per cent. Total agricultural products, including grain, 412,332 tons, being 52.27 per cent of the tonnage of all traffic carried by the road. Livestock, 61,825 tons, products of livestock, including livestock, 71,969 tons, being 9.12 per cent of the total traffic of the line. Hard coal 6,554 tons, .83 of one per cent of its traffic. Soft coal, 47,456 tons, 6.02 per cent. Products of mines, which includes all coal, 110,530 tons, 14.02 per cent. Lumber, 36,778 tons, total forest products, including lumber, 55,738 tons, being 7.06 per cent. Miscellaneous and merchandise, which includes manufactured products, 138,269 tons, being 17.53 per cent. The aggregate of those per cents, of course, equals 100 per cent.

Mr. O'BRIEN: It is consented that Mr. Staples may file the two statements which have been described by him, on Monday.

RE-CROSS EXAMINATION

By Mr. BUTLER:

Q. Referring to the first question asked you by Mr. O'Brien in the re-direct examination, as to what you think is the right method to extend the rates to long distances, we understand, from what you have heretofore said, that the point of greatest economy is reached at a distance of about 200 miles, in your judgment?

A. Oh, I didn't say that to Mr. O'Brien.

Q. No, but you said it to me.

A. I misunderstood.

Q. I have just referred to that evidence.

A. Well, in a general way, I said something that you could interpret to be that. Not arbitrary at all.

Q. So, then, your schedule to 400 miles is not built on the principle of continuing the average up to 200 miles, the point of the greatest economy, is it?

A. No, sir.

Q. So, in that regard, the schedule is inconsistent with what you now declare to be your opinion as to how the schedule ought to be made for long distances,—is to that extent inconsistent with it?

Attorney General YOUNG: You are leading down to the merchandise schedule.

Mr. BUTLER: Well, both schedules would be the same thing, Mr. Young.

A. Well, I want to say frankly, Mr. Butler, that, for what we term short-distance rates, (and when I say short-distance I mean that broad enough to cover state tariffs) I am not clear in my mind whether I would be satisfied in building a tariff upon that plan. I am not satisfied whether I would or not. I will tell you frankly.

Q. Now, let me see if this is not manifestly true: If you followed that plan and added for the distance above 200 miles

the average up to 200 miles, your tariffs for all distances above 200 miles would be higher, and at 400 miles very much higher than the tariffs that you have made, would they not?

A. Oh, yes.

Q. Almost double?

A. Well, they would be a good deal higher.

Q. Except as the average is affected by including that terminal allowance?

A. Yes; but, of course, in answereing that, that tariff wasn't built upon that plan at all.

Q. And if it was, it would be a good deal better tariff for the railroad companies, wouldn't it?

Attorney General YOUNG: A better tariff than they are using now, wouldn't it, a good deal?

WITNESS: Why, the scale would be different.

Q. You would have to revamp the whole thing in order to come out at the same place?

A. Yes; at the present time, we have landed where the companies do, on the 400-mile haul; anyway, so far as grain is concerned.

Attorney General YOUNG: Absolutely identical.

Q. You don't know as to the merchandise?

A. No, sir.

Q. Now, Mr. Staples, with reference to these coal rates at Taopi, Bailey, Lyle, Milton, Leroy, David, Reno, Dresbach, Otranto, Airlie, Flandreau and White Rock, were those points taken arbitrarily? They are not all the points covered by Mr. Flinn's statement as respects the merchandise on that subject, are they?

A. They have given me the Chicago rates so far as we have interstate tariffs.

Q. You haven't all of them?

A. No, sir. I asked them, as I told you, to give me all the Chicago rates.

Q. Now, with respect to distance: the Great Northern Railway Company leaves the state at St. Vincent, 385 miles from Minnesota Transfer?

A. Yes, sir.

Q. And at East Grand Forks, 317 miles. Now, taking the way of building up a tariff that you suggest, if, on the interstate rate out *via* Grand Forks, you built up a tariff by adding the average as explained to Mr. O'Brien, the 385-miles interstate rate, Minneapolis *via* Grand Forks into Dakota would be very considerably higher than the St. Vincent rate of 385 miles, would it not?

A. Explain that a little bit.

Q. Now, take the Great Northern—

A. You mean leaving at a different mileage?

Q. Yes. Take the Great Northern, the 385-mile rate is built up on the principle of your tariff, isn't it?

A. Yes.

Q. Going 200 miles and then adding half as much for each mile for the haul?

A. Yes, sir.

Q. Now, let us compare that 385-mile local rate to a 385-mile interstate rate, Minneapolis *via* East Grand Forks, and let us build up the interstate rate on the plan of adding the average from 200 miles, the point of greatest economy; that would produce an interstate rate for the distance of 385 miles very much higher than the state rate, would it not?

A. Yes, sir.

Q. Take again, for another illustration of the same truth, one point where the Soo crosses the state 392 miles from Duluth—I don't know the point—

A. I think that is right.

Q. Another point is 189 miles from Duluth?

A. Yes, sir.

Q. The tariff fixes 392 miles—is the figure you gave me,

(and I was surprised it was so great from Duluth on the Soo) maybe it was 292.

A. I think that is right; the mileage from Minnesota Transfer to Noyes is 392 miles.

Q. And from Duluth to another point is 189?

A. No, it is Minnesota Transfer, also, to Tenny.

Q. The 392-mile, rate, Minnesota Transfer to the border line, on the Soo, would be made by your tariff would it not?

A. Yes, sir.

Q. On this principle. Now, if you were building up an interstate tariff for the same distance, Minnesota Transfer *via* Tenny, which is 189 miles, and followed the plan which you say to Mr. O'Brien is the right plan to build up a tariff, you would produce altogether a higher interstate rate than you would a local rate for the same distance, would you not?

A. For the same distance, yes, sir.

Q. And so, if you take the boundary line of the state. (as Mr. Flinn did in preparation of one of his exhibits,) as the place to begin to add the average, and apply that to the situation on the St. Paul Company where it leaves the state, 75 miles, at one station, from the Minnesota Transfer, if you began there and added your average for the 75 miles, you would produce an interstate rate that would be absurdly high, wouldn't you?

A. Yes, sir.

Q. You couldn't adopt any such plan as that at all?

A. Wouldn't think of it.

Q. It would be absurd on its face, wouldn't it, as applied to that situation?

A. Certainly.

Q. Take the St. Paul Company again, the greatest distance from Minnesota Transfer to its most distant border town is 280 miles?

A. Yes, sir.

Q. That rate is fixed by your schedules?

A. Yes, sir.

Q. If you would apply the method which you say to Mr. O'Brien is right to the 280-mile interstate haul *via* the crossing 75 miles away from Minnesota Transfer, you would produce a rate different for the 280 miles interstate from that which you allow in your tariffs, wouldn't you?

A. Certainly.

Q. And it would produce a higher rate, would it not?

A. Yes, sir, very much.

Q. And, Mr. Staples, it would not be right, would it, in making an interstate rate, we will say, on the Northern Pacific, for Moorhead, (that we have spoken of so often,) on the basis of the state rates for 400 miles and then begin at the 400 miles and add the average for the 400 miles till you get to 600 or 800 or 1000 or 2000, as the case may be?

A. Do you mean to continue the schedule of rates after leaving Moorhead until you have reached a 400-mile point?

Q. Yes, sir, first, and then at the 400 miles apply this method of adding the average rate per ton per mile for the straight-away haul.

A. What is the point of your question?

Q. I ask you if that would be the right way to apply your method which you have now defined to Mr. O'Brien.

A. Well, Mr. Butler, the plan which I have been discussing I hope has been made clear; it is a matter of personal views on the question and can have no application to this tariff, which is built on an entirely different plan.

Q. Yes, but I am trying to find out what would happen if the railroad companies would undertake to apply the tariff built on this plan in Minnesota and undertook to apply the plan which you now say is right to its interstate long-haul business.

A. Why, of course, if the 400-mile point was deemed to be the point where the economy of operation had been reached—

Q. Yes, but it isn't. 200 miles is, for the purpose of our assumption here in this discussion.

A. For the purposes of discussing this character of tariff that I have been considering, you might perhaps take 200 miles as a reasonable point to consider, but the tariff in litigation here is not built upon that plan at all, and all my answers have to be in a certain way, according to the class of question you ask, but I am not willing to consider that the tariff is at all adapted to that plan, Mr. Butler.

Q. Take the situation from Minnesota Transfer, on the Great Northern, *via* Grand Forks, out of the state, 317 miles. Now, to East Grand Forks, it is true, of course, that your tariff controls the rate, isn't it?

A. Yes, sir.

Q. Now, assume that at the same time and in the next car of the same train there was just the same kind of stuff going beyond the line to a point 600 miles away, a point in Dakota; if you applied the principle that you have given Mr. O'Brien to make the long-haul interstate rate, when you got along the Great Northern road to a point in Minnesota 200 miles from the Minnesota Transfer (being the point of the greatest economy) then if you adopted the average, the allowance on the long-haul interstate rate to St. Vincent would be very much higher than the St. Vincent rate which the State has made, would it not?

A. Yes.

Q. That is, the St. Vincent proportion?

A. Yes, sir.

Q. Which would be wrong and incongruous, wouldn't it?

A. It would be impossible to maintain it.

Q. It would be impossible to maintain it?

A. Yes, sir.

Q. So, that, as respects these theories, the State having committed itself to one method of building this tariff, the

Railroad Company cannot, reasonably, and have any harmonious tariff, adopt the view which you have explained to Mr. O'Brien in answer to the first question on re-direct examination is the better view in making its long-haul interstate rates?

A. Why, I don't know whether they would find any excuse for being reasonable in the extension of their tariffs, Mr. Butler, and I say that without intending to reflect upon the companies or their method of doing business. I do not think that there is any plan or any rule which the railway companies adopt in extending tariffs of rates.

Q. Well, I know, but we ought to blame the National Commission and the State Commission for that, perhaps.

A. We are willing to take all the blame that is due us, and I admit that is a good deal, but you take the extension of the rate in the Northern Pacific tariffs on interstate traffic from St. Paul to Bismarck, and, unless I am mistaken, they have adopted that very plan.

Q. I think you have misapprehended my question. I am not asking about the rates that are in, I am asking if they follow your plan in the state as to the business in the state, in view of the answers you have given me in this cross-examination, if you do not think that it would be unreasonable for the railroad companies in making their interstate rates to adopt the plan which you said to Mr. O'Brien is a better one.

A. No, I wouldn't want to say yes to that.

Q. Well, you have just told me, as applied to the Great Northern situation from Minnesota Transfer to East Grand Forks, 317 miles, that your plan would work out a proportional on a long haul higher than the rate that you allow for the local.

A. Yes.

Q. And that that could not be maintained and would be absurd?

A. Yes.

Q. Then wherever the application of the two theories, one

for the local rate and the other for the interstate rate, would work any such result as that, it would be absurd, would it not?

A. Yes.

Q. And it would work that result in many, many instances, wouldn't it?

A. Yes, if one could conceive for a moment that it could ever be applied in the way you indicate; but I am unwilling to admit that.

Q. Let me put another phase of this to you. Take the Milwaukee road on its branch that crosses the state line 75 miles from Minnesota Transfer, should its interstate rate for the 400 miles, in your judgment, be the same as your 400-mile rate?

A. I don't know anything about the conditions that obtain.

Q. Assuming the conditions to be the same.

A. Well, I would not like to say that I think it should.

Q. Should the existence of the state line make any difference?

A. That does not seem to make any difference with the companies.

Q. Well, should it, in your judgment?

A. When I said it does not seem to make any difference, I perhaps answered inadvertently—it does seem to make a difference. Take, for instance, the rates from Chicago on coal, they maintain a very different rate on one side of the state line, from what they do on the other.

Q. Conditions being the same, ought it to make any difference whether movement gets out of the state in a short distance or in a long distance, in 75 miles or 385 miles, on the rate?

A. If one line of road controlled all the business, was not in competition in any way in the world, and the character of the business, and the business offered, and the country, were just the same practically, I see no reason why the rate should

not be extended to that point at the rate fixed by the Commission and be reasonable.

Q. Is there any reason why the St. Vincent rate, 385 miles from the Twin Cities, should not apply into Dakota *via* Moorhead to a point 385 miles away?

A. Well, I don't know whether there is or not.

Q. Assuming the conditions to be the same—You have sworn they are the same—

A. I don't think I have.

Q. Well, assume them to be the same whether you have or not?

A. Well, I have been asked to assume a great deal here, Mr. Butler, and I don't feel that I ought to be asked to testify as to the conditions existing all over the country, I can't do it.

Q. I know, but I ask you to assume it, for the purposes of your answer, that the conditions are substantially the same; then I ask you, should not the rate from Twin Cities to St. Vincent, 385 miles, all in Minnesota, be the same as the rate to a point in Dakota *via* Moorhead 385 miles away; should there be any difference in those two?

A. I might think they should be the same, but they are not the same.

Q. Well, don't you think they ought to be?

A. I leave that to the companies.

Q. Well, they think they ought to be.

A. No, they don't think so.

Adjourned until Monday morning, March 8th.

FEDERAL BUILDING, St. Paul, Minn., Monday, March 8, 1909. Hearing resumed at 10 A. M.

CHARLES F. STAPLES,
recalled on behalf of Defendants, testified:

RE-DIRECT EXAMINATION

By Mr. O'BRIEN:

Q. Have you the tables with you now, Mr. Staples, to which we were referring last Friday when adjournment was taken?

A. Yes, sir.

Witness produced statement marked "Defts.' Ex. 3-K—Staples."

Q. Defts.' Ex. 3-K—Staples is entitled "Tonnage statement taken from annual reports of railway companies to the Commission for year ending June 30, 1907, showing freight originating on the respective roads in Minnesota and freight received from connecting road and other carriers in Minnesota." This is the statement, Mr. Staples, which you partially explained at the last session?

A. Yes, sir.

Q. As I understand it, the statement Ex. 3-K shows, as to each road, all freight received by that road which originated in Minnesota, and all freight received by that road in Minnesota from other roads, without reference to where it originated?

A. Yes, sir.

Q. So, that, we might say that it shows all freight which is original in Minnesota with any one road?

A. Yes, sir. And when you use the word "received," that might be misleading; it really is freight forwarded, in the technical sense of the term. It is freight which the company accepts at some station in Minnesota to forward, and really

carries; but this statement covers freight accepted by any company for transportation at any station in the state of Minnesota, without reference to where it may transport the freight. Does that make it clear?

Mr. BUTLER: Or where it originated?

WITNESS: It would include all freight which originates at any station and also all freight which might be delivered to a company at any station in Minnesota, without reference to where that freight may have originated.

Mr. BUTLER: That is what I meant.

WITNESS: And, as I explained, the other day, is taken from the sworn statements of the companies themselves to our Commission, and is introduced for the purpose of reflecting the character of freight handled by the various companies in the state of Minnesota.

Q. Some of the figures upon the statement are in red, and some in black ink; what is the meaning of that?

A. The black-ink figures indicate the character of freight described which pertains to Minnesota only, as I have explained; but the red-ink figures indicate the same characters of freight but pertain to freight handled by the system as a whole and not confined to Minnesota alone. When I say the system as a whole, I mean the entire mileage covered by the road.

Q. Will you please say what you mean by "pertains to the entire system?" Take the Chicago, Milwaukee & St. Paul railway, the figures of which are all in red, and explain what those mean.

A. The first figure indicated is 4,196,776 tons; the character of the freight was grain, and I mean that that is all the grain accepted for transportation by that company over its entire system of road, which equalled 14.77 per cent of the entire tonnage of all freights carried by the system.

Q. And the same information is shown with regard to the Great Northern road?

A. Just the same, yes, sir; and those figures are shown that way for the reason that we have not the figures covering the state of Minnesota separately upon those two roads. That is the reason for making the distinction in this statement. And I take it if I read the percentages of the different characters of freight into the record that would be sufficient to cover the purpose of this statement.

Mr. O'BRIEN: Well, we will introduce the statement itself. We offer this in evidence—Defts.' Ex. 3-K—Staples.

WITNESS: Now, I have had prepared in our office another statement, which is headed, "Statement showing Mileage of Railroads in Minnesota, June 30, 1908, and the amount of grain carried on each railroad for the crop year beginning July 1, 1907, and ending June 30, 1908." The heading is not as explicit as it should be. This does not cover the grain carried from the large terminals, but only refers to country points within the state, and does cover the grain which was delivered to the various roads from the various country points for shipment, and, of course, is confined to the grain offered for shipment within the state of Minnesota.

Q. Will you read that into the record?

A. The Chicago Great Western Railway Company received for shipment 3,511,215 bushels of grain upon its road in Minnesota, making an average of 29,849 bushels per mile for the roadway mileage of that company within the state of Minnesota. The Chicago, Milwaukee & St. Paul Railway Company, 13,092,816 bushels, being an average of 10,542 bushels per mile of road. The Chicago & Northwestern, 7,759,104 bushels, making an average of 11,931 bushels per mile of road. When I say per mile, I cover the entire mileage of the system within the state. The Chicago, Rock Island & Pacific Railway, 2,592,688 bushels, being an average of 10,983 bushels per

mile. The Chicago, St. Paul, Minneapolis & Omaha Railway Company, 7,295,107 bushels, being an average of 16,796 bushels per mile. The Minneapolis, St. Paul & Sault Ste. Marie, 5,194,519 bushels, being an average of 9,585 bushels per mile. Minneapolis & St. Louis, 4,882,828 bushels, making an average of 12,867 bushels per mile. The Northern Pacific Railway Company, 4,783,876 bushels, making an average of 4,557 bushels per mile. The Great Northern Railway, 19,513,845 bushels, being an average of 10,247 bushels per mile. The average on all roads was 10,496 bushels per mile. These figures are taken from sworn returns made by the different shippers in the state of Minnesota from all (what we call) local stations, stations outside of the large terminals, including all kinds of grain delivered to these various carriers named, for transportation, without reference to the point to which it was destined, and only covers the grain that was delivered primarily. No grain is included which is accepted from another carrier, and none of the flour or grain products is included. We manufacture, in the state, about 125 millions of bushels of wheat into flour, and about 65 millions of bushels of that is ground at rural stations and shipped out in the shape of flour and other grain products, but is not included in these statements. These statements reflect merely the grain carried; and the flour is chiefly manufactured in the southern part of the state. The statement is made for the purpose of showing whether or not the grain is confined chiefly to any one point in the state, and I never had a statement of the character made before, but it convinces me that the grain is fairly distributed in its production. I would not want to say, however, per mile of road, where the grain itself is produced, that in the northern part of the state it would not average more than it does in the southern part of the state; but it does reflect the amount of grain per mile of road that each system has of that character of traffic. I ought to ex-

plain that a small portion of each one of these items showing the amount of grain received by the road, is estimated, and estimated for the reason that the returns were not quite complete for the year 1908, that is, the reports made by the elevator companies; but the amount of it which was estimated is a very small per cent of the total, and was estimated by taking the total number of elevators upon that particular line which had reported and taking the number of elevators which had not reported and apportioning to those the same average that was had from the elevators which did report; and, as I say, really is but a small part of the total.

I want to say for the information of the Master and the counsel on both sides, I have the detailed statement upon each road of the grain offered by each elevator company, indicating the name of the company and the name of the proprietor, shown here in detail; it is a very large volume, and I haven't any further use for it than to indicate that I have it if anybody desires the information.

Q. Well, it is probably not necessary to make an exhibit of that.

A. I didn't so intend it.

Q. I was about to ask you a very general question, Mr. Staples, and that was that you would make any further statement which, in your judgment, would be desirable as throwing additional light upon this question or explaining any of the matters involved here.

A. Well, I do not know where to refer to it in the testimony, but I have not been satisfied that the reference made to, or the extract taken from, the so-called speech of mine, delivered in Washington, was explained by me so as to be fully understood, and I have felt, and feel now, that there should be no question about that; I would like to refer to the language. Mr. Butler in propounding his question used this language, found on page 17 of the pamphlet: "Primarily,

when undertaking to fix reasonable rates, the first factor is to find approximately the initial or terminal cost of handling the traffic. This always involves handling and the delay and use of the cars at two terminals. The rate per ton per mile for straight-away haul should be constantly decreasing until it reaches a point as low as it is reasonable to require traffic moved for. Rates should be fixed as maximum rates and fixed high enough to allow a sufficient margin to meet short-haul rates or other competitive conditions." Now, I want to say he quoted me accurately, and that establishes or asserts a very broad principle; and what I wish to make plain is that my attitude has intended, through all my testimony, to be absolutely consistent with what I state there; and I think that it has been misunderstood somewhat, for the reason that testimony has been introduced into this case which implied (as I interpret it) that the rate or sum given for the last hundred miles fixed the constant hauling charge, but that is not at all the meaning of this language here as intended by me. I think I have made it clear, and if not, I wish to, that the meaning intended is that you reduce the constant hauling charge (to illustrate), you would begin, perhaps, with two cents per ton per mile upon any particular commodity, and you finally reach the point where you would get down to say seven mills per ton per mile; then considering the character of traffic and all conditions which would be found beyond that point, including the meeting of short-haul rates at junction points, —perhaps water competition on beyond might be a factor,— and all other conditions, character of traffic, character of roadway, difficulty of transportation, involving, of course, the entire cost, necessarily the cost of not only the equipment but of the road,—are all factors; and when you have reached that point, the general and broad principle means that that rate, the average up to that point, should be applied, not the amount that is allowed for the last hundred miles, by any

means. I simply want to make perfectly clear what my meaning is. But that does not mean, at all, that that should be established as a rule in fixing rates, because it would be entirely too arbitrary and could not be made a definite rule which should apply in all cases.

Mr. Butler asked me the question whether I had ever known a tariff established which did not recognize the principle that the further you go the lower the rate per ton per mile obtains, as a general rule. Now, in the long hauls, I have never known yet, any specific rule to be applied, and I don't believe that any tariff can be exhibited which will show that any specific rule is applied in the making of the tariff. They are not made that way. The language I have quoted here establishes a broad principle; it is a good deal more than a theory, but it is not recognized, so far, in general application. Now, while the rates made by the Commission are made to be reasonable maximum rates to govern within the state of Minnesota, they were made with the view that in promulgating tariffs, never yet, so far as I have been able to learn, has any company recognized any principle established in any local tariff which is extended to its long-haul or through traffic. That has some bearing on the question of the interdependence of rates. I recognize that, in many cases, there is an interdependence of rates. I need not explain that, I am sure; I have explained it in many cases where I have indicated clearly my view of what the rate in Superior should be after a rate from Duluth or to Duluth has been established, and I have taken all the border towns and made it clear how I view that question. But when it comes to the extension of the rates beyond the border line,—I have in my hand a copy of Mr. Flinn's exhibit showing the rates under the caption "Statement showing first-class rates, old and present, from St. Paul to stations on various roads in Minnesota and Iowa," and I find that, on the Omaha and the Northwestern roads,

there were no reductions after leaving the state line when they adopted the new schedule of maximum rates under the order of September 6th. With the Chicago Great Western Railway Company there have been two reductions to the next station beyond the state line, but those reductions were made June 20, 1908, a long time after the establishment of the rates by the Commission and their adoption by the companies. On the Minneapolis & St. Louis road, there appear to have been no changes made in the Iowa rates. Now, I will not go through this in detail. There were changes made on the western border of the state and in Dakota, by the northern roads. In this connection I want to say that, so far as I have been able to learn, the companies themselves, many of which operate in Iowa under tariffs that have been claimed for years to be unreasonably low, in issuing their interstate tariffs have not applied extensions of the Iowa distance tariff beyond the state line. I don't state that as a positive fact, but I have not been able to learn that they do, upon the same principle that the tariff is built, extend those rates beyond the state line. The Northern Pacific road did extend or make reductions in North Dakota on its main line as far as Bismarck, but they were not made at all upon the same basis as the Minnesota order establishes; they were graduated out or graded out, so that at Bismarck they practically ran out and reached the old rate; do not extend farther west, have no influence at all upon the through traffic, and, in my opinion, the cause for those reductions was not because the Minnesota rates influenced it to any great extent, but was brought about by the influence of St. Paul and Minneapolis wholesale dealers who, about that time, were taking excursions through the Dakotas for the purpose of working up trade; and I admire their enterprise, that is all right, but I say, in my opinion, that had more to do with these reductions through Dakota to Bismarck in the merchandise rates than any other influence. It is per-

fectly apparent that when there were no reductions made from the most points where the lines leave Minnesota, it was not because of the rates themselves that these reductions were made. I have here all the rates, old and new, as established by the company, from Minneapolis to Bismarck, I think covering every station, and my purpose of having that prepared was for my own information, that I might know exactly how those rates were put in.

I was asked this question, in cross-examination, whether I had ever known a tariff to be built upon any other plan than that of reducing the rate per ton per mile the farther the distance. I have taken the tariff of the Northern Pacific Company on its main line, No. 14,800, and I find, at one place, a distance of about 500 miles, where the rate at practically every station for that distance is a higher rate per ton per mile than the first point, which is Yates, Montana, without an interruption for that entire distance. I find that the rate yields a higher rate per ton per mile on first-class merchandise than the rate at the nearest point yields; and I assume that would apply to the ten classes and the subdivisions of Class 1; and I can name several other points where the rates are higher per ton per mile for the long distance than the shorter, the shorter being included within the longer. I cite those cases, not as a criticism for a moment, but to indicate that these tariffs are not made upon any particular principle. There are many matters which influence the Company in making the tariffs; I am not criticising that tariff at all, but I offer the tariff to show that it is not necessary for the Company to apply the principle established by the Commission in the extension of these rates. If that should govern, then it is natural, it seems to me, that the rate which has just been established by the Interstate Commerce Commission at Spokane Falls of $2.50 per hundred on first-class merchandise, should influence the Company in every intervening rate. I

don't see, if they are going to insist on that principle, how they are going to get away from it. I am assuming that they accept that rate. It has been determined to be a reasonable rate. That is on the main line of the Company between St. Paul and Seattle. If the Company will take the rate established by the State of Minnesota for 400 miles and apply the ton rate per mile that that rate gives on first class merchandise, it will give them a higher rate than they are now obtaining at Seattle; and many and many other points upon the line will do the same thing. The companies themselves, by tariffs voluntarily put in, are hauling wheat to-day, on a 12-cent rate in the state of Minnesota practically 400 miles, and by tariffs which they have voluntarily put in, which yield them just six mills per ton per mile. That rate, as I say, is not only the rate established voluntarily by the Company but it is the same rate that the Commission gives them in its order—not the Commission, (I beg pardon) but Chapter 232.

Mr. BUTLER: For what distance?

WITNESS: 400 miles.

Mr. BUTLER: In Minnesota?

WITNESS: Yes, sir.

Now, take Northern Pacific tariff No. 24,125, and it shows many points beyond that distance where the rate per ton per mile is higher than six mills per ton per mile, and many points where the longer distance carries a higher rate per ton per mile than the shorter distance does. I don't have any wish to criticise that tariff; I don't know anything about the circumstances under which it is built; I assume that it is all right; I don't say the rates are reasonable, I know nothing about it; but it seems to me that it refutes, absolutely, any claim that you cannot reasonably charge a higher rate per ton per mile for a long haul than a shorter haul, the shorter being included within the longer. Now, we have such a statute as that within Minnesota. There are many cases

where it is not observed, and the companies are justified in failing to observe it, in those particular cases, and they possibly are in this case; but it seems to me that that entirely refutes any claim that the rate per ton per mile must decrease the farther you carry the freight.

Another instance of that would be this: The rate on oranges, in carload lots, from the Coast to Bismarck, is $1.35 per hundred; Fargo, $1.15; Fergus Falls, $1.15; St. Paul, $1.15; Chicago, $1.15; New York, $1.15. Now, if you compute the rate per ton per mile to New York, it must be perfectly apparent that the rate per ton per mile at Fargo would be practically twice as high, more or less, I haven't made any computation. The rate on apples from the Coast, per hundred pounds, carload lots, is $1. And those rates carried to all points East of the Missouri river, all points in Canada, go as far East as you wish, to the Atlantic ocean. Now, I am not criticising those rates at all, they are made to fit a certain purpose, but they prove that such a rule as has been talked of cannot be established. My opinion is that the fact that they distribute oranges upon that basis is a very fine thing. That fruit is raised exclusively in one or two places in the United States, and this gives the people of the United States the benefit of that fruit at reasonable rates. I have no purpose to criticise the tariff.

The question has been asked me whether or not the extension of the rate per ton per mile upon different products, as established in Chapter 232, at the 400-mile point, would be a reasonable rate upon which to ask companies to haul those products. I have not answered that it would; I would have to know all the conditions before I would care to answer; and the quotation that I have taken from this address this morning does not imply, for a moment, that you would have to observe that. But the railway companies themselves (referring to the northern lines) have for years been transporting

lumber on voluntary rates which yield them four mills per ton per mile. Now, I speak of the rates from the Coast, and I recognize the fact that that is peculiar traffic; I recognize the fact that those rates, while they were voluntary rates were put in for a particular purpose, which at that time was for the purpose of loading empty cars back. I don't lose sight of that for a moment, but I assume that the character of traffic to and from the West is gradually changing; the companies themselves undertook to increase those rates something like two years ago. After a year of investigation by the Interstate Commerce Commission, reasonable maximum rates of forty-five cents per hundred were established upon fir lumber, 55 cents upon cedar. That investigation covered a period of perhaps a year or more. Those rates are now being observed by the companies. They were established, as I say, as reasonable maximum rates. Now, the lowest rate per ton per mile for the 400-mile haul, established under Chapter 232, was 4.3 mills upon soft coal, 5.4 upon hard coal. Lumber, if the value has any influence at all in making the rate, is worth from two to five or six times in value per car what the coal is. In the first place, I assume that this rate could be made to apply to very little coal which goes very far West, very little indeed; but if there should be some, I assume that if the companies can afford to haul that lumber they could better afford to haul the coal at these rates. Now, that is made upon the assumption that it was made to appear that they had to extend those rates upon that plan. I have undertaken to show here that they do not; nobody would expect that they should—at least, I would not; and if that rate is an unreasonably low rate, the Northern Pacific Road, under its contract with the Milwaukee Company, made voluntarily, has hauled, during the past years, and is hauling, not only thousands of tons, but I think hundred of thousands of tons of freight, covering grain, coal and lumber between Duluth and

St. Paul, which does not yield them more than 3.35 mills per ton per mile, and I assume that if they can haul that freight that distance at that rate, considering the distance between St. Paul and Duluth, in my opinion they have reached the maximum economy in operation; what roads desire is the long-haul traffic, and I haven't any doubt at all, in my own opinion, that they would be glad to haul that traffic clear across the continent. Now, it perhaps is unreasonable to say that, it is a personal opinion, but that is the rate they are getting for hauling it to-day.

I have a chart prepared here touching upon this question of the interdependence of rates, and it has not been my purpose, for a minute, to show that there is no interdependence of rates, because, in many cases, there is, I haven't any question about it at all; but I do claim that there is absolutely no dependence upon what the through rate to Seattle shall be, viewed from the standpoint of what the local rate in Minnesota shall be. Now, this chart I had prepared something like three or four years ago, for the purpose of studying this rate question, and it shows the rates at Minnesota points, on the Great Northern and Northern Pacific roads, and at Canadian points on the Canadian lines to Port Arthur, and on the Minnesota roads to Duluth, covering shipments of grain, and it does show a very marked degree of interdependence, or shows that one rate depends largely upon another, in those cases. And, necessarily so. It might not govern in other traffic, but the idea is this, that the rate which obtains from the western grain-fields to Duluth must necessarily be the same from the western grain-fields in Canada to Port Arthur, because the rate from Port Arthur and Duluth to the eastern markets will be just the same, and neither of these grain-fields could compete one with the other except upon the same basis of rates; so there is a case where one can very fairly say that there is an absolute dependence of one rate upon the

other. That covers, as I say, grain, but principally wheat, more wheat than any other grain. I don't know as I need go into it in detail, but it does show that, in some cases with a mileage several hundred miles longer, the rate is just the same, making the Canadian rates very much lower than the rates in the United States or from the Dakotas, and, as I say, it was not made for the purpose at all of showing how much less they carried grain for in Canada than what it is carried for in Minnesota or the Dakotas, but was made to show the relationship of those rates and to study out why it is as it is shown to be; and I don't wish to make any comparison in the rates, I think it would be obviously unfair; that is, if used as a measure of the value of moving the product.

Now, in order that I might learn what relation the Minnesota rates would bear to the present cattle rates maintained by the Northern Pacific Company outside of the state of Minnesota, I have had a statement prepared which reads, "Statement showing rates on cattle from points on Northern Pacific railway in North Dakota and Montana and rates that would be allowed by use of the same rate per ton per mile as allowed for 400 miles by Chapter 232." All these rates apply to St. Paul. Take the station of New Salem, 477 miles from St. Paul, present rate on cattle to St. Paul, 26.5 cents per 100 pounds; the rate which would be given applying the ton per mile which I have given under Chapter 232 at the 400-mile point would be 24.7 cents per 100 pounds. From Hebron, 519 miles, present rate, 27.5 cents; extension of Chapter 232, (which I will call the "new rate,") 26.9 cents. Dickinson, 559 miles, present rate, 28.9 cents. Medora, 598 miles, present rate, 32½ cents, new rate, 30.9 cents. Wibaux, 634 miles, present rate, 32½ cents; new rate 32.8 cents. Glendive, 665 miles, present rate, 32½ cents, new rate 34.4 cents. Miles City, 743 miles, present rate, 34 cents, new rate 38.4 cents. Rosebud, 776 miles, present rate, 35 cents, new rate, 40.1 cents.

Big Horn, 831 miles, present rate, 36 cents, new rate, 43 cents. Custer, 837 miles, present rate, 37 cents, new rate, 43.3 cents. Huntley, 878 miles, present rate, 38 cents, new rate, 45.4 cents. Billings, 890 miles, present rate, 40.5 cents, new rate, 46.1 cents. Laurel, 905 miles, present rate, 40.5 cents, new rate, 46.8 cents. Columbus, 931 miles, present rate, 41 cents, new rate, 48.2 cents. Big Timber, 971 miles, present rate, 44 cents, new rate, 50.2 cents. Livingston, 1005 miles, present rate, 45 cents, new rate, 52 cents. These distances are the distances found in the tariff, No. 23,300, and the rates are taken from tariff No. 14,158. And the statement was made, as I say, merely for the purpose of determining, if the rate at the 400-mile point should be extended upon that plan, (of the rate per ton per mile yielded at that point) how it would compare with the present rates maintained by the Company. Now, naturally (and I don't criticise it at all) I have been asked a great many questions upon certain assumptions of facts. That has been made necessary because of the fact that the commodity rates have not been put in and we can only speculate upon that problem. We do not have to speculate upon the problem of merchandise rates, because they have been put in. There is no doubt that the cattle rate up to this point (I think that is about as far as you would have to go) is a pertinent factor. The coal rate extending very far west, I do not think is a factor. The same with lumber rate. It will be found, by an examination of the tariff, that finally, when the merchandise rates were put in, there was very little recognition given to the reductions beyond the state line in any direction; it will also be found that when the voluntary reductions in coal and grain were made they extended comparatively short distances beyond the state line. There were some reductions made in the very northern part of North Dakota, due, in my judgment, more to the fact that the Soo Line built into that territory than any other influence; and I do not think the Minnesota

reductions had practically any influence beyond 25 or 50 miles from the state line, if they did that far.

RE-CROSS EXAMINATION

By Mr. BUTLER:

Q. Mr. Staples, so that there may be no misunderstanding as to what Exhibit 3-K is intended to show, and inasmuch as some reference was made to it before the exhibit had been prepared, I want to ask a few questions about it. I do understand it, but I want it to appear on the record. It does not show anything as respects what tonnage is local to the state and what is interstate?

A. You mean accepted for delivery to points within the state?

Q. No, I mean generally. It doesn't show anything as to the amount of tonnage that is local to Minnesota or the amount that is interstate commerce?

A. No, sir, there is no segregation.

Q. None whatever in any respect?

A. No, sir.

Q. It doesn't show, separately, the amount that originates at the stations in Minnesota?

A. No, sir.

Q. It includes these products from other states that happen to change carriers in Minnesota?

A. Answering that question, it would show this: a carrier coming from a point in Iowa not reached by the M. & St. L., and having traffic destined to a point out on the M. & St. L., would deliver such traffic at the first junction point with the M. & St. L., and that would be included in the M. & St. L.'s tonnage of that character of traffic.

Q. So tonnage from and to other stations which happen to change carriers in Minnesota is included in the statement?

A. Yes, but would only be duplicated in the event the ton-

nage originated in Minnesota and was delivered to a connecting carrier at some point within Minnesota.

Q. And if it changed carriers twice in Minnesota, it would be triplicated; if it originated—

A. It would be just the same.

Q. —in Minnesota, it would be multiplied by three?

A. Yes, sir.

Q. The Soo road at the time related to by this table, did not reach the city of Duluth?

A. No, sir.

Q. Much of the grain originating on its lines did go to Duluth?

A. Yes, sir.

Q. Both from Minnesota and points outside of Minnesota?

A. Yes, sir.

Q. Would come down to a junction with the Northern Pacific at Glenwood, a little west of the center of the state,—

A. Yes.

Q. —and change to the Northern Pacific and go to Duluth?

A. Yes.

Q. So all the Minnesota grain first delivered to the Soo is duplicated, is added to the Soo's tonnage, and added to the Northern Pacific's tonnage, both?

A. Yes, sir.

Q. And some of the roads, the Milwaukee and Great Northern, your statistics relate simply to the whole line?

A. The Milwaukee and the Great Northern, yes, sir.

Q. That would include the wheat originating in the Rocky mountains and going west to the Ocean?

A. I take it that it reflects or indicates the entire tonnage of wheat accepted by the Milwaukee road for transportation from any point on its entire system.

Q. Either east-bound or west-bound, whether going to the east coast or west coast?

A. I so understand it.

Q. And that is as respects all commodities that are referred to here?

A. Yes, sir.

Q. Now, this would include the tonnage received from a Chicago line, like the Great Western, at the Twin Cities which had been gathered together by the northern roads, brought to Minneapolis and re-shipped, either after or before milling?

A. Well, I assume that it would include grain but not after it was milled, except in the form of agricultural products, which would be shown there after it was milled.

Q. Well, it would be shown in one form or another under one head or another on the statement?

A. I think it would; that is the way I understand the statement.

Q. So that, as respects grain of all kinds and the products which are gathered together over the state and brought to Minneapolis and then subsequently delivered to other carriers at Minneapolis, that would all be duplication?

A. I think it would.

Q. And if you were to show similar statistics of the Q road, for example, as to what it originates in Minnesota, you would probably find the tonnage to be very large? I use the word originating in the sense that this tonnage shown on Ex. 3-K is originated on any line.

A. Yes.

Q. And the Q has practically no mileage in Minnesota at all?

A. That is true.

Q. It gets out of the state just below these cities?

A. I take it it would cover all the grain the Q would receive from Minneapolis for shipments to any point.

Q. So, by reason of these duplications and the mingling of interstate and local business together, it is very hard to get

any fact relating to the commerce covered by the jurisdiction of your Commission, isn't it?

A. Oh, it wasn't intended for that, Mr. Butler. That ought to be apparent on its face.

Q. It is no good for that, anyway, is it?

A. No, it wouldn't reflect that at all.

Q. And what it does appear to show is that the Omaha, as respects grain, has four times as much per mile of road as the Northern Pacific?

Mr. O'BRIEN: You are using a different table now, Mr. Butler.

Mr. BUTLER: Well, it is the figures given in connection with this exhibit.

Mr. O'BRIEN: Not in connection at all. If you will permit me, Ex. 3-K is intended to show the character of the traffic transported by each road, without reference to where it originates particularly, or where its destination is, and it is filled with duplications, as told by Mr. Staples, and consequently cannot be taken to be a basis of the total tonnage of the state or the total commerce of the state, but then, where it is duplicated, each road has it, each road has a tonnage of that character; that is all it is intended for. Now, Mr. Staples read into the record a statement of the amount of grain originating at various stations upon the lines of the various roads in the state of Minnesota, and the statement read into the record has no connection whatever with Ex. 3-K.

Q. As I understand your testimony, then, as Mr. O'Brien has explained it to me, is that you have testified from this memorandum (which has not been offered in evidence) that, as respects grain, the Omaha company originates four times as much per mile of road in Minnesota as the Northern Pacific does; one is 16,000 bushels per mile (disregarding the hundreds) and the other is 4,000 bushels per mile?

A. That is the idea, Mr. Butler.

Q. You haven't told us where it goes or how much of it is within the jurisdiction of the Commission?

A. No, sir; that wasn't the purpose of the exhibit at all, Mr. Butler; I requested the statement made, and indicated why; I had no knowledge what it would show at all; but I wanted to get, as nearly as I could, any fact which would show the amount of grain produced and shipped within the state of Minnesota along the different roads. That was the purpose of the statement.

Q. Have you found out whether it is increasing or decreasing?

A. No, sir, I can't answer that.

Q. Are not the same sources of information open to you for other years?

A. No, this is the first year we have ever required it.

Q. So you don't know whether or not the stations of any particular road originate more now than they heretofore did?

A. No.

Q. Or whether the stations of all roads do in the aggregate?

A. No, I do not. Originated in the state? no, sir, I wouldn't know that,

Q. Would it have any bearing upon rate-making if it appeared that the amount was going down? Would that be a good reason for putting the rates down or a good reason for letting them go up, or would it have any bearing upon that question?

A. Oh, I can hardly answer that. That would have to be considered with all other traffic at the time, and I want to say that this statement is not prepared upon any data obtained with the view of having any bearing in this case; the Commission undertook, a year ago, to secure statements from elevator companies and shippers of grain of just the aggregate amount of grain they were shipping, and all data upon the question of grading and inspecting grain by the various com-

panies—not designed to show the volume of grain produced in Minnesota, but for the purpose of a closer supervision upon the question of in-inspections at local elevators and the inspection of the same grain by the Commission at our terminals.

Q. Then, as I understand it, this tonnage information that you gave us as to the origination of grain at the Minnesota stations is not conceived by you to have any bearing upon the reasonableness of the rates involved here?

A. Well, I wouldn't want to say that, exactly, Mr. Butler, but I will say this: the question seems to have presented itself here whether or not there was any grain, or whether or not the production of grain, was not confined chiefly to a certain section of the state, and, in order to inform myself upon that, I had this tabulation made.

Q. Would the fact that there is four times as much grain per mile of road upon one road as there is upon another, be a fact of any significance as to whether or not both roads should have the same rate on grain?

A. It might be a factor, Mr. Butler, but it would have to be considered with all other traffic carried by the companies.

Q. Well, if it is a factor in this case, it has either been disregarded or you have found other factors which operate in the other direction and overcome the influence of this one?

A. Well, as I have said, that would only be one factor in the question of rates. If rates were being made solely with the view of grain alone,—

Q. Then the Omaha would take—

A. —it might be a factor.

Q. Then the Omaha would take a much lower rate than the Northern Pacific, because it has four times as much per mile of road, according to your information?

A. Well, I have indicated that the divisions or the averages are not based upon the mileage producing the grain.

Now, take some of the roads having long mileage within that part of the state which doesn't produce any grain at all, really that mileage there is a factor in finding the average; fair or unfair is has been so used.

Q. This statement as to grain doesn't purport to show what kind of grain?

A. No, sir.

Q. It includes wheat?

A. All grain.

Q. Flax and oats?

A. All grain.

Q. And barley and rye?

A. And corn.

Q. And all other grains that are mentioned in the first two classes of the Commodity Act?

A. Yes, sir.

Q. Without distinction?

A. No, Mr. Butler, those subdivisions of so-called grain products, outside of wheat and flax, indicated I think, in Class 11—

Q. Well, it includes the grains I have mentioned; that is, wheat, oats, rye, and barley and corn?

A. Just the grains produced on the farm.

Q. Popped corn, or unpopped corn?

A. Possibly a little popped.

Q. Now, referring again, to the part of the speech which you quoted, Mr. Staples, the matter of rates is divided into allowance for the terminal cost of handling the traffic,—that is one element—and the other is the amount allowed in the rate for the straight-away haul; it was your intention to so divide the subject, was it not?

A. Well, practically so, yes sir, in the first instance.

Q. Now, if you would take your schedule and construe this paragraph in your speech as you have construed it since

your re-direct examination was commenced, and began at the 200-mile point, the point of the greatest economy, or substantially that, and added the average, you would allow more for the straight-away haul after the 200 miles than you would for the first 200 miles, because the average of the rate up to that point, is higher than the allowance for the straight-away haul up to that point, wouldn't you? that would be the fact in figures?

A. When you refer, Mr. Butler, to the definition or construction (I don't recall your language) placed upon that language, since the re-direct examination, I feel that should be corrected, because there has been no change in any definition I have given at any time.

Q. Well, your definition now, Mr. Staples, is this: that when you get to the point of the highest economy of 200 miles, then, for the straight-away haul, there should be allowed the average rate per ton per mile included in the rate up to that point, and you have constructed your cattle rates, that you have just compared here from the points in Montana, on that basis, haven't you?

A. No, sir; and, more than that, I have never indicated that, so far as the construction of that tariff is concerned, it reflects that the greatest economy of haul has been reached at the 200-mile point or at any other point.

Q. Well, do I understand it aright, the meaning which was in your mind that should be given, as you claim, to this speech is that after you reach the point of highest economy, then for the additional straight-away haul, should be added per mile the average rate per ton per mile which is allowed in the tariff up to that point?

A. Yes, sir.

Q. That is right?

A. Yes, sir.

Q. Now, if we take 200 miles as the point of highest econ-

omy and do that very thing, we will then allow more for the straight-away haul above the 200 miles than was allowed for the straight-away haul below the 200 miles, because that below the 200 miles includes the terminal service, too?

A. Well, that is your construction.

Q. Well, that is the fact, in figures, is it not?

A. No, no, not as a practical application, because that straight-away haul I don't care how far you go,—

Q. All right, now, just turn—

A. Let me complete this, Mr. Butler,—I don't care how far you go, that straight-away haul covers the entire distance and always includes the terminal charges.

Q. That is what I say, if you take the average rate to a point 200 miles, that average rate will be higher than the rate per ton per mile allowed for the straight-away haul during that 200 miles, will it not?

A. Yes, sir.

Q. And if you add that average as distance increases above the 200 miles, you will be allowing more for the straight-away haul above the 200 miles than is allowed for the straight-away haul below the 200 miles; that is arithmetically true, is it not?

A. As a practical proposition, that isn't the principle upon which I have given my answer at all, because I include the terminal charge in all the rates, without reference to the distance.

Q. You and I are misunderstanding, I think, Mr. Staples.

A. No, I think not; I think I understand you.

Q. Well, then, we will have to get a pencil and figure it.

A. I understand you perfectly.

Q. Then do I understand you aright that you now define this speech to be, and the right rule to be, take the average rate per ton per mile allowed in the tariff for the distance up to the highest point of economy, and add that average per

mile as each mile of distance is added; is that it?

A. You have got it right, sir.

Q. Now, let us go to the next step. Suppose we take your tariff at 400 miles, as you did in coal. The amount allowed in soft coal per mile for the last 200 miles is 1.8 mills per ton per mile?

A. I do not know.

Q. Well, that is the fact, and that is in evidence before the Master in the other case, and the table showing it. That is, take 1.8 cents for 100 miles haul for one ton; but, the average rate for the whole 400 is 3; you have just given that to me, three mills and a fraction.

A. I will give it to you, it is more than that.

Q. 3.35 mills per ton per mile?

A. 4.3.

Q. You said 3.35.

A. No, you are thinking of another matter.

Q. Now, if we would, in making the interstate rates, take the soft coal rate that you have made for 400 miles in Minnesota and then construe your rule as laid down in this speech to be as you now define it, instead of adding 1.8 mills per ton per mile, which is there added for each mile from 200 miles to 400 miles, from 400 miles to 600 miles, your rule would require us to add over 4 mills per ton per mile, would it not?

A. 4.3.

Q. And you think that is the way to do and that is what you meant, by this speech, should be done?

A. I have so sworn here, several times, Mr. Butler.

Q. Now, Mr. Staples, can you tell the Master any reason the rate per ton per mile allowed for the straight-away haul should be more than doubled for the distances above 400 miles as compared with the distances between 200 and 400 miles?

A. It is not doubled, and I absolutely refuse to separate

the terminal charges from the hauling charges in fixing the rate to any point.

Q. Well, you don't understand me.

A. Well, I think I do.

Q. You have brought in here, in your direct examination, certain tables to show what the allowances are in the tariffs of the railroad companies and in your own tariffs, for the straight-way haul between 100 and 200 miles of the route and between 200 miles and 300 miles of the route; now, it appears that if we construe your speech as you say we should as respects the soft-coal rate, after you get to 400 miles you say the average in the whole rate per ton per mile up to that point is 4 mills-plus per ton per mile?

A. 4.3.

Q. Now, that is the average rate?

A. Yes, sir.

Q. That is what should be added for increased distances, is it not; assuming that that is applying your rule as you want it applied?

A. Assuming that is the point where the rate is found to be the reasonable rate.

Q. Well, that 400 miles is far enough to get the lowest economy, isn't it?

A. And too far.

Q. All right, we will assume now, for the purpose of the point, that that is right.

A. Yes.

Q. That 400 is the right point. Now, will you tell the Master any reason why over 4 mills should be allowed for the straight-away haul for distances from over 400 miles when only 1.8 mills per ton per mile was allowed for the straight-away haul for the distance from 200 to 400 miles?

Mr. O'BRIEN: You don't really claim that is the mathematical result of that, do you?

A. Now, I want to say that I have not introduced any table or any testimony indicating that the haul for the last 100 miles was eighteen cents, one cent or ten cents. Mr. Butler has asked me the question, many times, to subtract the difference between the rate at 200 miles and 300, and 300 and 400, and tell him what was allowed. I have made the subtriction. I will assume I have made it correctly. That does not establish any principle, in my mind, and I absolutely refuse—

Q. I didn't ask you that.

A. You have asked it many times.

Q. Mr. O'Brien first asked you that, as respects Ex. 3-E—Staples—

A. In order to make a comparison with the rates put in by the companies themselves.

Q. Yes, sir, and now I ask you to do the same thing and we have done it, and now I want you to tell the Master why it is that twice as much per ton per mile should be allowed after you pass 400 miles as was allowed between 200 miles and 400 miles;

A. We do not allow any more. That is the point.

Mr. O'BRIEN: Don't allow any more?

WITNESS: Not any more, no, sir.

Q. Now, Mr. Staples,—

A. Now, Mr. Butler, you are talking about a tariff which has been filed here indicating reasonable maximum rates within the state of Minnesota, and you are trying to confuse me upon a general principle which, personally, I have indicated is my view of the most equitable means of making up a tariff.

Q. Well, your tariff, the tariff of this Commission, and the tariff of the Legislature, is not made on the principle that you say that you intended to define in that speech, is it?

A. I do not think it is.

Q. You know it is not, don't you?

A. No, I don't know that.

Q. Well, very good.

A. I say I don't think it is.

Q. Well, Mr. Staples, you say that you mean by this language here, which has been quoted a number of times in the record, that, for the additional haul, there should be added for each mile the average of the rate that had gone before?

A. Yes. No—Yes, after you have reached a certain point.

Q. Certainly. Now, that has not been done in your tariff, has it, in a single instance?

A. No, sir. When I say I don't know whether that principle has been established in that tariff or not, I mean this: if the 400-mile point is the point and you are to apply it beyond that, the principle *is* established. I don't say the 400-mile point is the point.

Q. I mean in the tariff that you have made, that principle is not applied.

A. No, sir.

Q. No figure is built up that way—

A. No, sir.

Q. —in Chapter 232 or in your order of September 6, 1906?

A. No, sir; no pretense that it is.

Q. And you say that the addition between 400 miles and 500 miles in that order is a mistake and is the result of a mistake of a clerk.

A. I said so.

Q. And as it is built, it is built precisely upon the same plan, is it not, that the rest of the tariff was built on?

A. Yes, sir.

Q. And this conception of adding the average rate that is found by taking the distance up to the point of highest economy, is not evidenced in any schedule that is here in litigation, is it?

A. I have never said it was.

Q. And the plan of those things (of those tariffs) is not the plan that you followed in making this cattle-rate comparison from Wibaux to St. Paul and from intermediate points to St. Paul, is it? that is not made on the plan of your tariff here?

A. No, only on the assumption that the 400-mile point is the point of maximum economy of operation.

Q. Yes, sir. Now, Mr. Staples, does it not follow, without regard to where the point of maximum economy is, that if you start out and build a tariff on the plan that these two tariffs in litigation have been built, and then at any point begin to add an average, then you increase the rate as the distance increases more rapidly than it had been increasing before, at the last of the haul?

A. I will concede that.

Q. Now, can you tell the Master, conditions being the same (as they are) on both sides of the Red river, why the allowance for the straight-away haul should increase at any point?

A. I refuse, again, to separate the question of the straight-away haul from the average haul from the point of origin.

Q. I don't ask you to separate it. I will ask you, flat, if, in your judgment, as an expert rate-maker, there is any reason, on the face of the earth, conditions being as they are on both sides of the river, why the amount allowed for the straight-away haul should increase at any point.

A. Just explain, will you? When you say straight-away haul, I want to understand distinctly whether you are now confining it to the haul allowed for the last mile or the average haul for the through.

Q. The last mile, we start out on a tariff of yours.

A. I say that I don't recognize that at all.

Q. Well, we will have to recognize it, your Commission has recognized it.

A. No, sir, never.

Q. They went from here to Moorhead.

A. Yes.

Q. For the first 200 miles of that schedule, the rate allowed for the straight-away haul, is double what is allowed for a like distance the other forty miles to Moorhead, is it not?

A. You are separating the straight-away haul from the entire cost of the transportation, and the plan of that tariff does not admit of it, for a moment, and I refuse to do it.

Mr. O'BRIEN: Mr. Butler, I really think, if you think a moment, you will see that you are falling into an error there. You don't claim that the rate per ton per mile for any distance within the schedule of Chapter 232 would be less than the rate per ton per mile upon the principle outside of that, upon the basis shown by Mr. Staples, do you?

Mr. BUTLER: Well, now, let me see if I can make my perplexity clear to you. This statement says that "Primarily when undertaking to fix reasonable rates, the first factor is to find approximately the initial or terminal cost of handling the traffic, this always involves handling and the delay and use of the cars at two terminals." In the Commission's order, for Class 1, 12 cents per 100 pounds is allowed for five miles; 11.02 cents is the amount allowed in the tariff for terminal services, because .98 of a cent is the difference for each additional five miles. You subtract .98 of a cent from 12 cents, that would leave 11.02 cents as the terminal charge. Then it says, "The rate per ton per mile for straight-away haul should be constantly decreasing till it reaches a point as low as it is reasonable to require the traffic moved for. Rates should be fixed as maximum rates and fixed high enough to allow a sufficient margin to meet short-haul rates or other

competitive conditions." Now, he speaks of the allowance of the straight-away haul decreasing constantly. It does not decrease constantly, it decreases by steps of 200 miles each in the tariff, and it would make a broken line, if projected graphically, and if it decreased constantly it would make a concave line, projected graphically. Now, the same addition is made to the rate after passing 200 miles for the straight-away haul, (to-wit, .98,) as was made before that point for five miles. Now, it seems to me that the amount allowed for the straight-away haul after the 200 miles is reached is just half what it was before.

Q. Now, my question is this—and again I put it to you, Mr. Staples,—take your Moorhead situation and apply the rule that you say you meant here, to-wit, the average of all that went before up to the highest point of economy, I ask you if you do not have to increase the allowance made on account of added distance per mile for five miles or for ten miles or for twenty miles, as the case may be.

A. I don't believe that I shall ever convince Mr. Butler; he is determined to confuse a principle laid down by me with another principle, upon which this tariff was built.

Q. No, Mr. Staples, I have not made myself clear.

A. Evidently not.

Q. I understand that you say that the tariff, as respects that principle, is wrong, and that the statement in your speech is right?

A. Well, that is a personal view.

Q. Yes, according to your personal view.

A. A personal view, and I am not criticising this tariff.

Q. No, but there is a collision between your opinion as to the right rule and the tariff. Now, the railroad companies have to deal with a tariff that is made, not with what you thought ought to be made.

A. I concede that, within the limits of Minnesota, and they

try to show that they do not, after leaving the state line.

Q. Now, I want to ask you if, applying your rule to the tariff of the Commission (with which you do not agree) it will not involve an increase in the allowance per mile for the straight-away haul after you have got to the point of highest economy.

Mr. O'BRIEN: That is objected to upon the ground that the question includes a statement that Mr. Staples has not testified to—that he does not agree with the tariff.

WITNESS: I was going to correct Mr. Butler. Mr. Butler (when I am awake) can put no such answer as that into my mouth, for I have never uttered it and had no intention to utter it, nor a statement that sounds anything like it, and I should have corrected Mr. Butler, without any interruption on the part of Mr. O'Brien. I don't say he intends to do that but that is the effect of it.

Q. Then, Mr. Staples, you say that the rule laid down in this speech, as you have explained it to us, is the right one, do you not?

A. I say this,—

Q. In your judgment, in your personal judgment?

A. I say this: that, in my personal opinion, that would be, in a broad sense, a better rule than any I know of in the building of a tariff.

Q. And you say that that rule has not been applied in the tariffs promulgated by your Commission here in litigation?

A. Perfectly apparent that it has not.

Q. And it was not recognized or applied in the order of December 14th, which never went into effect by reason of lawsuits or suits in equity brought by the railway companies?

A. Never in any sense.

Q. And it is not applied in Chapter 232?

A. No, sir.

Q. And to the extent that you think that the general rule which you have given is better than the principle laid down in the tariff that I have referred to, you disagree with the tariffs, do you not?

A. I think I ought to explain the conditions under which that language was used. The various railway commissions of the country hold annual meetings, and committees of those commissions hold meetings intervening, to consider different topics. Next week, I attend a meeting in Columbus, in connection with the business of the National Association. That association has for its object the matter of education, exactly the same, I take it, as the various organizations or associations of the different branches of the railway service have their organizations, and because a man gets up in a meeting and expresses a view or his views, that is no sign they are accepted, it is a question of education. It may be possible that, in time, his views, either in a modified form or just as they were delivered originally, will be agreed to. Now, I was a party to the making of this tariff. That utterance of mine is no criticism upon this tariff. It may be shown that that is not practical, but, in the light that I have at this time, if the authority was delegated to me, I feel that, unless further investigation should convince me that the principle was wrong, it would have a considerable influence with me. And I have no criticism of this tariff, I believe that this tariff of rates, as I have testified, in its practical application, will yield to the companies fair earnings, reasonable earnings, within the state of Minnesota, and we recognize, necessarily, that that is the only traffic that it can be applied to, either practically or any other way; and I am not establishing here a principle upon which they should extend their rates beyond the state line, but am trying, however, to refute the claim that they must be established either in accordance with the principles of this tariff or any other principle, so far as state authority

is concerned; that the custom of the companies, the tariffs themselves, which they now have in effect, make it perfectly clear that that is the case.

Mr. BUTLER: We will offer in evidence this entire speech, and to avoid reading it into the record will let the reporter copy it. I have only one copy.

WITNESS: I don't know as I have any; I may have one. If I had known my speech was to become so famous, I never would have delivered it.

Q. You referred, in your examination this morning, to an exhibit introduced by Mr. Flinn for the purpose of showing that, as respects the class rates on the southern roads, which were applied November 15th, 1906, there have been but few changes on the interstate rates to points beyond.

A. Yes; that is my understanding of it, Mr. Butler.

Q. You do not contend, do you, Mr. Staples, that the situation as respects freight moving under the class rates, as bearing upon the necessity or propriety of a change of the interstate rates to the border towns outside of the state, would be the same as respects commodity rates? I think you have covered that.

A. Yes, I do not want to assert that I think it would, Mr. Butler.

Q. There would be very different rates as respects the things moving on the commodity rates, the price to the consumer is very much more directly affected by the freight rate than it is on the other?

A. Yes, and one very important influence is the question of commercial conditions—control of trade. I want to say, frankly, that the rate—

Q. Chicago is supreme in that territory?

A. Yes, I have indicated that, and I have no purpose to try and cover it, for a minute.

Q. Now, the jobbing points of Chicago and Minneapolis

and St. Paul, compared, present about this situation: If you add to the Atlantic-seaboard rate to Chicago the local rate in the territory of Minnesota, and do likewise as respects the Twin Cities, Chicago will be supreme in most of southern Minnesota, following a line *via* Wabasha and Farmington, would it not?

A. Well, I would not like to say that. They do control a large amount of trade, but I don't understand that they control the trade, Mr. Butler.

Mr. BUTLER: I will call your Honor's attention to a decision of the Interstate Commerce Commission in the Missouri river rate case, from which it is plain, I think, that, as respects this territory, there is a dividing line and that Chicago is supreme in southern Minnesota points.

The MASTER: My attention has been called to that, I think.

Mr. BUTLER: I referred to the subject when Mr. Flinn was upon the stand, but I will hand your Honor the decision.

WITNESS: You will recall, Mr. Butler, that, either under you or Mr. O'Brien, I testified that I regard that as a very important influence on the question of what the rates shall be.

Q. Do not the illustrations which you used as respects the rates on oranges, apples, grain, in Canada and in the states, make it apparent that commercial conditions and the welfare of the public do, in those instances, at least, require that distance be practically disregarded in making freight rates, and that it cannot be taken as a measure of or guide to the rate?

A. My purpose, Mr. Butler, in introducing those elements, was to show that I do regard that such is the case, and I so testified. I don't criticise the rates, for a moment.

Q. Now, do you think that it would be right to fix a schedule of rates on the Northern Pacific road, gathering up the products of the soil and bringing them to the center in Minnesota, and the converse of that, distributing to those points, which would be the equivalent or the substantial equivalent

of the rate between Duluth and Minneapolis as evidenced in the contract between the Milwaukee Company and the Northern Pacific Company to which you referred?

A. No, sir; I didn't say so and I don't think so.

Q. That rate, as a matter of fact, is as high, is it not, per ton per mile, as the Twin City-Chicago rate on grain and its products of 7½ cents per hundred pounds for 400 miles, and nearly 500 miles by some of the carriers?

A. Just hurriedly, I think, perhaps, there would not be a very great difference, Mr. Butler.

Q. And you would think that it would be manifestly unjust and absurd to apply such rates to Minnesota intrastate business, except as between Duluth and the Twin Cities, would you not?

A. Our Commission has never indicated that we thought that should be the measure of the rate.

Q. Well, you agree with me that it would be absurd to do that, don't you?

A. Well, we have never used that as a basis.

Q. You don't want to go further in condemnation of it than that?

(No answer.)

Q. Do you think that the lumber rates to which you referred, from Seattle and points on Puget Sound into Minnesota, furnish any test to go by for the rates intrastate in Minnesota other than between the Twin Cities and Duluth?

A. We have never used those, Mr. Butler, but I think it perfectly fair to introduce them as a matter of comparison.

Q. Well, do you think that they furnish a test (that was my question,) or a guide?

A. I said this, in connection with that, (which I think covers my views) that, if the companies can handle that traffic at the rates at which it is handled and in the manner in which it is handled, I can't see any reason why they could not

handle such traffic as coal at equally low rates, although the coal moves in the other direction. I don't mean that I would establish that rate upon coal for the reason that they do transport lumber at that rate, but, as an abstract question, just considering those two characters of traffic, necessarily mixing them with the other traffic they do handle, I can't see why—

Q. You think that peddling out the coal in carloads along to the various little hamlets and stations, etc., furnishes a reasonable—

A. I don't say that, Mr. Butler, I said for transportation of that traffic through, if they were to have it as through traffic. Don't misunderstand me. I don't lose sight of all those—

Q. That is, if they could get coal to go back—

A. Yes.

Q. —in the same volume, etc.?

A. Yes, sir.

Q. Well, they have coal out there, so I guess we needn't settle that.

A. I said I didn't think it was a factor.

Mr. Staples' address before the National Association of Railway Commissioners, 1907, was as follows:

"REPORT OF COMMITTEE ON RATES AND RATE MAKING.

"Your Committee in presenting this subject fully appreciates how important it is and what difficulties the question presents; and believing that no duty devolving upon the various railway commissions offers so difficult a problem to solve, we can at best but offer suggestions which it is hoped will provoke discussion of the questions. We believe that the sentiment of the people is growing more and more crystallized into the mind that the rates charged by the railway companies for transporting or interchanging the various products of the country from one section to another should be a subject

of supervision and regulation by the various state and national authorities. This supervision should be intelligent, and both fair to the people and just to the transportation companies.

"Necessarily in the matter of supervision, traffic is divided into two general classes, state and interstate. State traffic is all traffic moving between points within one state and which at no point en route passes outside the state lines. Interstate traffic is all traffic which when moving to destination moves from a point in one state to some point in another state. As we understand the laws, the first is entirely under jurisdiction of state authorities and the second under national authorities. While the transportation companies have recently undertaken to deny the states any constitutional right to regulate rates, there can be no doubt that the courts will reaffirm the long line of decisions giving the various states the control of all state traffic. Unfortunately the people as a rule are unable to distinguish between state and interstate traffic.

"While the subject of this report includes the question of passenger rates we do not deem it necessary to devote much space to that branch of the rate question. Passenger rates are little complicated as compared with freight rates and whether right or wrong the controlling factor in their making is that of comparison. We believe, however, that public authorities should carefully consider when inquiring into passenger rates, the question as to whether that branch of the railway business is bearing its proper share of the entire operating expenses. To all who have taken an active interest in trying to determine with any degree of accuracy the cost of conducting any particular portion of the traffic of a railway company, the question presented is a most difficult one. To say that rate making is a science is easy, to prove it would be most difficult.

"Who can name the traffic official who will undertake to set forth what it costs a railway company to conduct any par-

ticular traffic? To those familiar with the question it is unnecessary to point out why it cannot be done. While we believe it is impossible to determine the exact cost of moving any particular line or class of freight, it does not seem to be necessary in order to exercise an intelligent supervision.

"Unfortunately the public is unwilling to use any other means of determining the reasonableness of a rate than that of comparison. This would be good evidence in cases where conditions and circumstances are similar, something most difficult to find, and yet comparisons are not conclusive. On this point we quote from the Ames case as follows:

> "(But they are not necessarily bound to give absolutely the same rates to the people of all states), for the kind and amount of business, and the cost thereof, are factors which determine largely the question of rates, and these vary in the several states. The volume of business in one state may be greater per mile, while the cost of construction and of maintenance is less. Hence, to enforce the same rates in both states might result in one great injustice, while in the other it would only be reasonable and fair. Comparisons, therefore, between the rates of two states, are of little value, unless all of the elements that enter into the problem are presented. It may be true, as testified by some of the witnesses, that the existing local rates in Nebraska are 40 per cent higher than similar rates in the state of Iowa. But it is also true that the mileage earnings in Iowa are greater than in Nebraska. In Iowa there are 230 people to each mile of railroad, while in Nebraska there are but 190; and as a rule, the more people there are the more business there is. Hence, a mere difference between the rates in two states is of comparatively little significance."

"Again, another contention on the part of the public is to undertake to show that rates are too high by showing the gross and net earnings of the company, always using, of course, the entire system, refusing to understand that when

considering state and interstate business or rates you cannot treat them as having any relation one to the other. Here again we are governed by the limitations within which a state is confined when fixing rates. Perhaps that can best be shown by quoting from the Ames case which, so far as we know, is governing. The Court says:

> "In our judgment, it must be held that the reasonableness or unreasonableness of the rates prescribed by a state for the transportation of persons and property wholly within its limits, must be determined without reference to the interstate business done by the carrier, or to the profits derived from it. The state cannot justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the state has no control. It is only rates for the transportation of persons and property between points within the state that the state can prescribe; and when it undertakes to prescribe rates not to be exceeded by the carrier, it must do so with reference exclusively to what is just and reasonable, as between the carrier and the public, in respect to domestic business. The argument that a railroad line is an entirety; that its income goes into, and its expenses are provided for out of, a common fund; and that its capitalization is on its entire line, within and without the state, can have no application where the state is without authority over rates on its entire line, and can only deal with local rates and make such regulations as are necessary to give just compensation on local business."

"If the railway mileage within each state was owned and operated exclusively by a state corporation, the matter of rate regulation would be much simplified. The cases are rare where a road of any importance is not an interstate road and a large share of the business is interstate business. In the state of Minnesota, with between 8,000 and 9,000 miles of railway, there are but few miles of exclusively state roads,

and which, from a public standpoint, are comparatively unimportant, and even these roads are engaged largely in interstate traffic through a system of joint rates governing the shipments to points outside the state. The purely state business will not average to exceed 6 per cent of the entire business done over all the systems in the state.

"To be more specific, the gross earnings from business done over the entire systems of all the railroads located in Minnesota, amounts, in the aggregate, to $433,355,683.33 for the year ending June 30th, 1906. The gross earnings on local or purely state business amounts to $39,921,112.31, being 9.2 per cent of the total.

"The local business includes about $16,000,000 in gross earnings of ore traffic which has been ruled to be interstate business, leaving about $23,000,000 of actually state business which would be 5.4 per cent of the total earnings of the systems.

"Of course, in some cases it is much more than 5.4 per cent and in some cases it is much less, as will be seen by the following statement:

"STATEMENT TAKEN FROM R. R. CO.'S ANNUAL REPORTS TO THE COMMISSION FOR THE YEAR ENDING JUNE 30th, 1906.

Name of Railroad.	Mileage—System.	Mileage—Minnesota.	Percentage of strictly local earnings in Minnesota to all Minnesota earnings including state and interstate earnings.	Percentage of strictly local earnings in Minnesota to total gross earnings of the system.
C. R. & Q. R. R.	8,473	24	04.93%	00.03%
C. G. W. Ry.	1,404	393	43.04	09.00
C. M. & St. P. Ry.	7,029	1,202	30.02	05.29
C. & N. W. Ry.	7,415	650	32.28	01.65

C. St. P. M. & O.	1,628	436	33.00	10.08
C. R. I. & P. Ry.	4,938	236	26.09	00.56
Great Northern	4,734	1,887	28.80	12.40
M. & St. L. R. R.	770	379	86.20	59.50
Soo Line	2,135	541	41.17	15.94
Northern Pacific	5,884	1,034	35.56	07.85
W. & S. F. Ry.	304	134	29.07	16.19
Wis. Cent. Ry.	917	25	02.44	00.09

"This may be argued as a reason for entire federal control, something we believe to be impossible without amending the Constitution. This we do not believe the states will concede until it is demonstrated that it is more practical than experience has yet shown it to be.

"There have been many general rate reductions in different states followed by reductions on interstate traffic, and, so far as we know, these have all been brought about by the affirmative action of the state authorities. So far as we are advised, we know of no general reduction due to any action by the federal authorities. We believe the best interests of the people would not be served by placing the entire responsibility for rate control in the federal government. The people desire the authority to rest as near at home as possible. We believe there should be a much closer relationship between the federal and state authorities than seems to exist at present. It would seem entirely in the interest of the best public service that in many matters a state commission act as agent for the Interstate Commerce Commission to the advantage of both. Each authority should merit and enjoy the full confidence of the other.

"The work of examining railway accounts presents a striking example where joint authority should exist. In the case of local complaints of discrimination in interstate shipments, it would seem feasible that a state commission could act as agent to take testimony and either transmit the same or the

finding of facts to the federal authorities.

"To bring about this co-operation does not seem to need any legislation whatever, the present laws are sufficiently broad.

"Some of the essential matters to have in mind when undertaking to determine a schedule of rates may be enumerated as follows:

"1. The rate should be such that every article of commerce can be moved by rail to market.

"2. The value of the commodity or article shipped must be considered. Gold-dust and saw-dust cannot bear the same rate; nor can raw material bear the same rate as the finished product, though made out of the same kind and class of timber.

"3. The risk to the carrier must be considered, as the carrier is, to a large extent, an insurer. Livestock and fancy dry-goods are more subject to damage in transit than pig-iron.

"4. The distance hauled must be considered.

"5. The weight and bulk of the article shipped must be considered. Vehicles, set up, occupy more space and less weight per car-load than if knocked down and boxed and should pay a higher rate.

"6. The rate must be fair to the shipper and just to the carrier.

"7. The necessities of the carrier and its right to receive in the aggregate reasonable compensation for all services rendered is required and demanded by the Constitution and laws of the land, as well as by good conscience and common justice and must be the governing factor.

"8. And to determine this, the aggregate tonnage it can reasonably expect to haul, and the class of such tonnage and whether it is high-grade or low-grade tonnage, and what the

body of the rate can be expected to yield to the carrier, must be considered.

"Finally, there are two vital points to which the public are most concerned and which should at the same time be the ruling factors with all public authorities charged with regulating rates of common carriers, viz.: first, the rates must be such as will allow the carrier to earn in the aggregate a reasonable earning on its entire business (what constitutes a reasonable earning will be treated later). Second, the rates should be fixed or made so that each particular traffic bears its fair and proper share of the burden of cost to the public. Admitted these conditions present difficult problems in their solution, success will crown the efforts of such intelligent and conscientious officials as will undertake the work.

"It is reasonable to say, we must find a more reliable way of arriving at what are reasonable earnings for a railway company in the near future than has governed in the past. The public will never cease to clamor for lower rates until a fair and rational means of demonstrating what is a reasonable earning is found. The opinon among those most earnest in the effort to solve the question is that, first, you must find the value of the property necessarily involved in conducting the business.

"The stock and bond value is always available but we believe all will agree that you cannot allow this basis of value to govern.

"To find the value of a state road is comparatively easy, but a more difficult question is to determine the total value of that part of an interstate road located within the state lines. Some have contended that this value should be the cost of reproduction. While this is one of the important factors, a careful study of court decisions and an analysis of the subject lead to the conclusion that the cost of reproduction is the important element, but alone is insufficient. The

amount of money actually spent in construction, as well as the cost of reproduction, together with a consideration of the permanency of its traffic and its density with density of population, as well as many other matters, should be considered together, and from such consideration should come the final determination of the value of the road.

"There has been no fixed rule arrived at as yet how the value shall be ascertained. Probably the nearest rule is that laid down in the Ames case and that is at best indefinite. It reads as follows:

> "In this same case the court ruled as to what must be the basis of the rate as follows: 'We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And, in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stocks, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute,, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience.'"

"It is thought by many and argued by most of the railway officials that it is impossible to arrive at the fair value of railway property. We do not share in this opinion. When we arrive at what shall be accepted as a fair basis and can secure the frank co-operation of the officials of the companies, the valuing of railway properties can be reduced to a science.

Even with all the obstacles thrown around the work, fair progress is being made in some of the states.

"Believing the valuing of railway property to be the most important factor in order to determine what are reasonable earnings for common carriers, it would seem proper at this time that an effort be made to have universal action taken to have all the railway properties valued as of the same date, and, if possible using the same basis or plan of conducting the work. It seems useless and most unwise to have this work duplicated by state and national authorities. By the use of different plans different results would be reached which would only result in discrediting the whole work.

"We have no right to guess at values and should not accept the values placed by the carriers. The work should be so conducted that when completed both state and federal authorities would have complete data so far as railroad valuations are concerned.

"Having found the value of the property within the state, we are presented, if possible, with the more difficult question of determining what part of this can be properly chargeable to the state as necessary for the conducting of the purely state business.

"This involves a determination of a separate captalization on which will be based reasonable returns on purely intrastate business. This can be secured by segregating the total value of an interstate road into its value for intrastate as well as interstate purposes. The latter would be available in determining the reasonableness of interstate earnings, but it is with the former that state commissioners have to deal. We must afford a practical solution under existing conditions.

"The next step is to separate this value into the value of its use for intrastate and interstate purposes. A simple division would be in proportion to the revenue derived from each use. But this division would be based on the rate charged and

would be unstable, as the rates under investigation might be changed or the volume of the shipments changed, thus unsettling the very foundation on which it was based. Nor would a division based on the ton mile haul for each be correct because of the additional cost of the short local haul compared with the long state or interstate haul. Again, the interstate haul is usually a commodity belonging to a low classification, while the local shipments might be and usually are a much different classification.

"We quote some suggestions given by Commissioner Lawrence, of Washington, on this question. Mr. Lawrence says:

"A correct determination would involve the ton haul, classification and relative cost of haul, the latter being distinguished from operating expenses, which have an entirely separate consideration. Possibly the best available method would be to take the aggregate tonnage hauled one mile separated into the various classes hauled as shown by the records for a given period of say five years, using these classes in a fixed relationship to each other on a percentage basis to be determined. Multiply these factors by the average charge per ton mile for the average distance of the intrastate haul as well as interstate haul, as shown by an average in the United States, the ratio of the products being the determination as far as the freight haul is concerned. While the charge per ton per mile involved the rate, yet it is to so slight a degree, being an average covering a large area, that it would not perceptibly affect a change in a local rate or rates. The division cannot be made with mathematical accuracy, in any event.

"Or assume that the segregation of value should be made without taking the amount of the rate into consideration in any degree, the proportion would be determined by taking the aggregate tonnage hauled one mile, both intrastate and interstate, subdivided into the various classes, and multiply by the cost of haul per ton mile, such item of cost to be determined by expert testimony, the products secured to be used as before stated."

"The attention of this Convention is especially invited to this important question in the hope that its full discussion will offer a fair solution.

"Having arrived at the value of the property for state purposes, we proceed generally by allowing sufficient earnings to pay all operating expenses, including taxes and all necessary sums required to maintain the property at the highest standard of efficiency, to these sums add sufficient to pay a reasonable interest on the value of the property. These items constitute the important factors when determining what are reasonable earnings for a railway company, and should never be lost sight of when making a schedule of rates. Let it be noted that it is well to scrutinize carefully the item of operating expenses. With some companies this item is sometimes a cloak used to cover the cost of reconstructing the line and in some cases even the building of extensions.

"We are pleased to note the fast approaching time when the rate question will not be shrouded in such mystery. We compliment the Interstate Commerce Commission on its purpose to have tariffs more simple and plain. We note with pleasure the frankness with which many traffic officials come forward and acknowledge that the fixing of a rate is largely an arbitrary function, the two governing factors being what the traffic will bear and what competition will allow.

"Theoretically, all rates would be made upon the distance tariff plan, but local conditions, such as the demands of shippers at large centers of trade, mines, factories, etc., often force the companies to take certain articles out of the regular tariff and fix a special rate commonly called a commodity rate, always lower than the rate provided in the distance tariff. It is claimed in behalf of this practice that the public is benefited by stimulating the business. While this is a discrimination, whether it is an unreasonable discrimination is always a question for argument and determination.

"We will assume for the purposes of this report that these discriminations are reasonable and necessary from a railway traffic standpoint. These distinctions are noted, not because they are new, but as noting some of the primary elements of rate-making. The discussion of the subject involves the question of a distance tariff, which governs when other rates are not named, and the special class or commodity rates which govern articles originally moved on the distance tariff, the distance tariff as now used being what remains after all articles under special class or commodity rates have been taken away.

"A subject so nearly related to rates and rate-making that it must be mentioned in an article on that subject, is that of classification. In determining rates, reference must be had to classification, at least with reference to the relationship of the various classes as to the relative rates to be charged on each. But a discussion of this subject will not be entered into here.

"A standard distance tariff would not in itself determine the reasonableness of rates, nor would it mean uniform rates where used except where the distance tariff applied. The necessity for such a standard is evident on an examination of different distance tariffs and noting the discrepancies.

"A standard distance tariff for classified freight should be based on a regular succession of maximum charges proportioned to increasing distances, with a fixed relationship of the classes as to the rate charged for first-class freight. The theory of such standard being that it would be varied as to the amount of rate by adding or deducting given percentages to suit conditions in different states. This may not work out to a practical solution, but an analysis of the methods used in constructing such a tariff is of interest. In two states, Minnesota and Washington, distance tariffs, based on such theory, have been made effective within the past year.

"The argument has been advanced that the logical conclusion of rate-making by the state or national government would be to place all rates on a distance tariff basis. This argument is not borne out by the trend of action on the part of railway commissions, nor by the decisions of the courts.

"The fixing of reasonable rates presents a most difficult question viewed from any standpoint. In undertaking this work the public authorities should have the confidence and assistance of the officers of the railway company.

"Justice requires that there should be a fair relation of rates; that each class of traffic should bear its fair share of the burden. Here it may be said, that especially with the freight carried under the so-called commodity rates, what would be fair and reasonable in one section of the country might not be reasonable at some other point. It is sometimes necessary to move certain articles on a very low rate, if moved at all. This may involve the bread and butter of many families. The courts have recognised this principle and necessity and will uphold public authorities in the making of a specially low rate, even a less rate than will pay for the actual cost of moving the traffic, provided, that the total revenues of the company are not reduced below what are reasonable earnings.

"Primarily when undertaking to fix reasonable rates, the first factor is to find approximately the initial or terminal cost of handling the traffic, this always involves handling and the delay and use of the cars at two terminals.

"The rate per ton per mile for straight-away haul should be constantly decreasing till it reaches a point as low as it is reasonable to require the traffic moved for. Rates should be fixed as maximum rates and fixed high enough to allow a sufficient margin to meet short-haul rates or other competitive conditions.

"A most essential factor is to first find, as nearly as possi-

ble, the cost of doing the business, something as yet little considered in rate-making.

"Then the authorities should be in full possession of data showing the exact movement of all the traffic affected, with the earnings from the same. By this means any proposed rates can be applied to the traffic actually moved for a given period to find just what the effect will be on the carrier's revenue.

"There is nothing more elusive, dangerous or misleading than the plan of percentage increase or decrease in rates, especially so, if there is to be any change in the classification or relation of rates or commodities. To reduce a schedule of rates a given percentage gives little or no indication as to how much the revenues of the carrier are affected,—a very important factor in the making of a new schedule of rates.

"In conclusion, we believe it can be said that no public servant is charged with greater responsibilities and a more important trust than those whose duty it is to supervise properties valued at hundreds of millions of dollars. This trust should be fearlessly and conscientiously discharged that exact justice be done to carrier and patron alike.

C. W. STAPLES, of MINNESOTA, Chairman.

Recess until 2 P. M.

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